Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1183

CARBON FUEL COMPANY,

Petitioner,

vs.

UNITED MINE WORKERS OF AMERICA; DISTRICT 17, United Mine Workers of America; and LOCAL UNIONS NOS. 6572, 7626, and 2236, United Mine Workers of America,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition for Certiorari filed January 29, 1979
Certiorari Granted March 19, 1979

JARRETT PRINTING COMPANY, CHARLESTON, W. VA

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Notice of Appeal of International Union, District 17, Local Union No. 7626, Local Union No. 6572, and Local Union No. 2236, UMW ..... February 18, 1977
Opinion and Judgment of the Court of Appeals for the Fourth Circuit ..... September 21, 1978
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Portions of Plaintiff's Complaint

IN THE

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

CARBON FUEL COMPANY,

Plaintiff,

vs. Civil Action No. 74-152 CH

UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 17, United Mine Workers of America; LOCAL UNION NO. 6572, United Mine Workers of America; LOCAL UNION NO. 7626, United Mine Workers of America; and LOCAL UNION NO. 2236, United Mine Workers of America,

Defendants.

COMPLAINT

The plaintiff, Carbon Fuel Company, a corporation, for its complaint against the above-named defendants, avers and says:

1. This action is brought under §301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. §185, and this Court has jurisdiction of this action under said §301 of this Act.

2. The plaintiff, Carbon Fuel Company, is a corporation organized and existing under and by virtue of the laws of the State of West Virginia; is engaged in the mining, preparation, and shipment of bituminous coal,

an industry affecting commerce as defined in said Act; and carries on said business and employs employees therein at its Carbon and Winifrede Division coal mines, and related facilities, in Kanawha and Boone Counties, and other localities, in the Southern District of West Virginia, within the jurisdiction of this Court. Specifically, Carbon Fuel Company, during the times here relevant, has operated in its Carbon Division on Cabin Creek near Carbon, Kanawha County, its Nos. 7, 9, 20, 20A, 28, 29, 36, 39 and 41 mines; and in its Winifrede Division, on Fields Creek, near Winifrede in Kanawha County, West Virginia, its Nos. 6, 18 ,31, Morton or 34 and 38 mines, and their related facilities.

3. The defendant, United Mine Workers of America, is an unincorporated association and labor organization, having its principal office at 900 15th Street, N.W., Washington, D. C.; and said defendant, through its duly authorized officers and agents, is engaged in representing and acting for employee members including employees of the plaintiff, at plaintiff's said mines and related facilities, including those recited in paragraph number 2 above, within the jurisdiction of this Court.

4. The defendant, District No. 17, United Mine Workers of America, is an unincorporated association and labor organization, and is an administrative division and agency of the defendant, United Mine Workers of America. Said defendant has its principal office at 1300 Kanawha Boulevard, East, Charleston, West Virginia, and is engaged in representing and acting for employee members, including employees of the plaintiff, Carbon Fuel Company, at its said mines and related facilities, within the jurisdiction of this Court. In all things hereinafter alleged, the defendant, District No. 17, United Mine Workers of America, has acted within the scope of

and pursuant to its agency relationship to the defendant United Mine Workers of America.

5. The defendant, Local Union No. 6572, United Mine Workers of America, is an unincorporated association and labor organization, and is an administrative division and agency of the defendants, United Mine Workers of America, and District No. 17, United Mine Workers of America, and is engaged in representing and acting for employee members, including employees of the plaintiff at Nos. 9, 28, 29, 39 and 41 mines and related facilities, within the jurisdiction of this Court. In all things hereinafter alleged, the defendant Local Union No. 6572, United Mine Workers of America, has acted within the scope of and pursuant to its agency relationship to the defendants District No. 17, United Mine Workers of America, and United Mine Workers of America.

6. The defendant, Local Union No. 7626, United Mine Workers of America, is an unincorporated association and labor organization, and is an administrative division and agency of the defendants, United Mine Workers of America and District No. 17, United Mine Workers of America, and is engaged in representing and acting for employee members, including employees of the plaintiff at its aforesaid Nos. 7, 20, 20A and 36 mines and related facilities, within the jurisdiction of this Court. In all things hereafter alleged, the defendant, Local Union No. 7626, United Mine Workers of America, has acted within the scope of and pursuant to its agency relationship with the defendants, United Mine Workers of America and District No. 17, United Mine Workers of America.

7. The defendant, Local Union No. 2236, United Mine Workers of America, is an unincorporated association and labor organization, and is an administrative division

and agency of the defendants, United Mine Workers of America and District No. 17, United Mine Workers of America, and is engaged in representing and acting for employee members, including employees of the plaintiff, at its aforesaid Nos. 6, 8, 31, 34 or Morton, and 38 mines and related facilities, within the jurisdiction of this Court. In all things hereafter alleged, the defendant, Local Union No. 2236, United Mine Workers of America, has acted within the scope of and pursuant to its agency relationship with the defendants, United Mine Workers of America and District No. 17, United Mine Workers of America.

8. The plaintiff and the defendants have entered into, and are parties to and bound by, that certain collective bargaining contract known as the "National Bituminous Coal Wage Agreement of 1971," which said contract became effective on November 12, 1971, and has remained in full force and effect to this date. A copy of said contract is attached hereto as Exhibit "A", and by this reference is made a part of this complaint.

9. Said National Bituminous Coal Wage Agreement of 1971 binds the coal operators signatory thereto, including the plaintiff to provide prescribed wages, hours, and conditions of employment for their employees during the life of said contract; and, in consideration thereof, said contract binds the employees of the said plaintiff who are represented by the defendant labor organizations, to perform work and services for said plaintiff, as scheduled by the plaintiff, in accordance with said contract, without engaging in strikes or work stoppages; and further binds the said defendants, their officers, agents and representatives to cause and require the performance of said contract by their members and em-

ployees represented by them, and to maintain the integrity of said contract.

10. Said National Bituminous Coal Wage Agreement of 1971 contains specific provisions respecting the settlement of differences, disputes, or grievances, between the parties, which said provisions read as follows:

"ARTICLE XVII—SETTLEMENT OF DISPUTES

"Section (a) Mine Committee

"A committee of three employees shall be elected at each mine by the employees at such mine. Each member of the mine committee shall be an employee of the mine at which he is a committee member, and shall be eligible to serve as a committee member so long as he continues to be an employee of said mine. The duties of the mine committee shall be confined to the adjustment of disputes arising out of this agreement that the mine management and the employee or employees have failed to adjust. The mine committee shall have no other authority or exercise any other control, nor in any way interfere with the operation of the mine; for violation of this section any and all members of the committee may be removed from the committee. (1941)

"Section (b) Grievance Procedure

"Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or, should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time. (The parties will not be represented by legal counsel at any of the steps below.):

"(1) By the aggrieved party and his foreman who shall have authority to settle the complaint. Any grievance which is not filed by the aggrieved party within fifteen calendar days after he reasonably should have known of such grievance shall be considered invalid and not subject to further prosecution under the grievance machinery.

"(2) If no agreement is reached, the grievance shall be taken up by the mine committee and the mine management within five calendar days of the conclusion of step 1. A standard grievance form shall be completed and jointly signed by the parties to the grievance. Such a form will be agreed upon by the parties.

"(3) If no agreement is reached, the grievance shall be taken up by the UMW district representative of the Employer within ten calendar days of the conclusion of step 2.

"(4) If no agreement is reached, the grievance shall be taken up by the Board within ten calendar days of the conclusion of step 3 or in discharge cases within five calendar days of notice of appeal. The Board shall consist of four members, two of whom shall be designated by the Union and two by the Employer. Neither the Union's representative on the Board nor the Employer's representatives on the Board shall be the same persons who participated in steps 1, 2, or 3 of this procedure.

"(5) Should the Board fail to agree the matter shall, within ten calendar days after decision by the Board, be referred to an umpire who shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and fees incident to the services of any umpire shall be paid equally by the Employer or Employers affected and by the Union.

"The grievant shall have the right to be present at each step, if he so desires, of the foregoing procedures until such time as all evidence is taken. A decision reached at any stage prior to step 5 of the proceedings above outlined shall be reduced to writing and signed by both parties. The decision shall be binding on both parties and shall not be subject to reopening except by mutual agreement."

11. Said National Bituminous Coal Wage Agreement of 1971 contains the further specific provisions which reads as follows:

"ARTICLE XX—MAINTAIN INTEGRITY OF CONTRACT

"The United Mine Workers of America and the Employers agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Disputes" article of this agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract and by collective bargaining without recourse to the courts."

12. Said National Bituminous Coal Wage Agreement of 1971 contains further specific provisions respecting the settlement of safety and health questions and disputes, which read as follows:

Section (g) Mine Health and Safety Committee Inspections

(1) The mine health and safety committee may inspect any portion of a mine and surface

installations covered therewith. If the committee believes conditions found endanger the lives and bodies of the employees, it shall report its findings and recommendations to the Employer. In those special instances where the committee believes an imminent danger exists and the committee recommends that the Employer remove all employees from the involved area, the Employer is required to follow the recommendations of the committee.

(2) While making inspections, the mine health and safety committee shall be accompanied by a representative of the Employer.

(3) If the mine health and safety committee in closing down an area of the mine acts arbitrarily and capriciously, members of such committee may be removed from the committee. Grievances that may arise as a result of a request for removal of a member of the health and safety committee under this section shall be handled in accordance with the provisions of article XVII entitled "Settlement of Disputes".

(4) The mine health and safety committee and the Employer shall maintain such records concerning inspections, findings, recommendations, and actions relating to this provision of the agreement as may be required and copies of all reports made by the mine health and safety committee shall be filed with the Employer.

Section (h) Settlement of Health or Safety Disputes

When a dispute arises at the mine involving health or safety, an immediate, earnest and sincere effort shall be made to resolve the matter through the following steps:

(1) By the mine management and the mine health and safety committee.

(2) By the United Mine Workers of America district safety coordinator or an alternate designated by the United Mine Workers of America Safety Director and a representative designated by the Employer. Failing to resolve the issue, they shall immediately call in for consultation a representative of the United States Bureau of Mines and/or the appropriate state agency in a further attempt to resolve the issue.

(3) By the United Mine Workers of America Safety Director or his representative and a representative designated by the Employer.

(4) By the Joint Industry Health and Safety Committee which for the purposes of this step shall employ a special structure and procedures as set forth below:

(A) The six regular committee members shall select a neutral chairman having special knowledge in matters of coal mine health and/or safety. The selection must be made immediately following referral of a dispute. The regular committee shall adopt procedures that will insure such timely selection.

(B) The neutral chairman and either four or six regular members equally representing the United Mine Workers of America and the Employers shall constitute a quorum. When a dispute involves health issues, two of the regular members must be those designated in section (e) hereof who have special knowledge and expertise in coal mine health matters.

(C) Decisions shall be reached not later than five days following referral to the committee. Such decisions shall be by majority vote and shall be binding upon the parties involved in the dispute.

* * *

14. The said National Bituminous Coal Wage Agreement of 1971, including the terms and provisions hereinabove set forth, requires that all local and district differences and disputes of any kind or nature, or local trouble of any kind, between the plaintiff and its employees, and between the said plaintiff and the defendants be handled exclusively and settled peacefully through the grievance and arbitration procedures therein provided; and prohibits strikes and work stoppages as a means or method of attempting to settle any disputes.

15. Preceding the making and entering into of the said National Bituminous Coal Wage Agreement of 1971, the plaintiff, and the defendants had been parties to the National Bituminous Coal Wage Agreement of 1968, a copy of which is attached hereto as Exhibit "B", and by this reference made a part hereof, covering employees at said plaintiff's mines, which contract contained provisions which likewise required the said defendants and the employees represented by them to settle all disputes and differences and local or district disputes and all trouble of any kind at plaintiffs mines and related facilities through the grievance and arbitration procedures provided therein; and which contract likewise prohibited the said labor organization defendants and the employees represented by them from engaging in strikes and work stoppages as a means of attempting to settle such disputes and differences, and which contract likewise carried forward said provision of the Kanawha District Agreement.

16. The said National Bituminous Coal Wage Agreements of 1971, and 1968, were entered into by the plaintiff in good faith with the object and purpose of obtaining the regular, dependable and uninterrupted work and

services of its employees represented by said defendants and establishing stability and peace in their labor relations; and the expectation thereof was the principal if not the sole consideration for plaintiff's entry into said contracts.

17. Notwithstanding the terms and provisions of said past and present contracts, and the provisions therein contained for peaceful settlement of disputes, differences and local trouble of any kind between the parties, and prohibiting strikes and work stoppages, the defendants, their officers, agents, representatives, and plaintiff's employees represented by them, have for a long time followed a pattern, practice, and course of action of refusing to submit such disputes, differences and local troubles at the plaintiff's mines or related facilities to peaceful settlement through the grievance and arbitration procedures provided by said contracts, and have repeatedly threatened to engage in, and have engaged in, strikes and work stoppages with an object to force and require the plaintiff to settle such disputes and differences in accordance with the demands of the defendants and plaintiff's employees represented by them, in violation of said contracts.

Portions of Defendants' Answer

IN THE

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

CARBON FUEL COMPANY,

Plaintiff,

vs. Civil Action No. 74-152 CH

UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 17, United Mine Workers of America; LOCAL UNION NO. 6572, United Mine Workers of America; LOCAL UNION NO. 7626, United Mine Workers of America; and LOCAL UNION NO. 2236, United Mine Workers of America,

Defendants.

ANSWER

NOW COMES defendants, International Union, United Mine Workers of America; District No. 17, United Mine Workers of America; Local Union No. 2236, United Mine Workers of America; Local Union No. 6572, United Mine Workers of America; and Local Union No. 7626, United Mine Workers of America, by counsel, and make the following Answer to Plaintiff's Complaint.

First Defense

1. Defendants deny the averments of paragraph 1 of Plaintiff's Complaint.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 2 of Plaintiff's Complaint.

3. Defendants admit the averments of paragraph 3 of Plaintiff's Complaint.

4. Defendants deny the averments of paragraph 4 of Plaintiff's Complaint which state:

> and is an administrative division and agency of the defendant,

which state

> In all things hereinafter alleged, the defendant, District No. 17, United Mine Workers of America, has acted within the scope of and pursuant to its agency relationship to the defendant United Mine Workers of America,

and Defendants admit the remaining portions of said paragraph 4.

5. Defendants deny the averments of paragraphs 5, 6 and 7 of Plaintiff's Complaint which state:

> and is an administrative division and agency of the defendants, United Mine Workers of America, and District 17, United Mine Workers of America

which state in substance:

> In all things hereinafter alleged, the defendant Local Union Nos. 2236, 6572 and 7626 have acted within the scope of and pursuant to its agency relationship to the defendants District No. 17, United Mine Workers of America and United Mine Workers of America,

and, Defendants admit the remaining portions of said paragraphs 5, 6 and 7.

6. Defendants deny the averments of paragraph 8 of Plaintiff's Complaint, inasmuch as a copy of said agreement was not attached to the service copy of plaintiff's Complaint.

7. Defendants deny the averments of paragraph 9 of Plaintiff's Complaint which state:

> said contract binds the employees of the said plaintiff who are represented by the defendant labor organizations, to perform work and services for said plaintiff, as scheduled by the plaintiff, in accordance with said contract, without engaging in strikes or work stoppages; and further binds the said labor organization defendants, their officers, agents and representatives to cause and require the performance of said contract by their members and employees represented by them, and to maintain the integrity of said contract.

and Defendants admit the remaining averments of paragraph 9.

8. Defendants admit the averments of paragraphs 10, 11 and 12 of Plaintiff's Complaint.

9. Defendants deny the averments of paragraphs 13, 14 and 15 of Plaintiff's Complaint.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 16 of Plaintiff's Complaint.

11. Defendants deny the averments of paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of Plaintiff's Complaint.

Second Defense

The National Bituminous Coal Wage Agreement of 1971 and the National Bituminous Coal Wage Agreement

of 1968 do not expressly or impliedly prohibit work stoppages during the course of said Agreements. Therefore, this Court lacks jurisdiction under Section 301 of the Labor-Management Relations Act, as amended, 29 U.S.C.A. Section 185, and the Complaint fails to state a claim on which relief can be granted against Defendants.

Third Defense

The work stoppages alleged in the Complaint were not called, authorized or ratified by any of the parties defendant. On the contrary, the work stoppages were wildcat strikes and defendants may not be held responsible therefor.

TRANSCRIPT OF PROCEEDINGS

Testimony of Plaintiff's Witnesses

L. Newton Thomas

71 DIRECT EXAMINATION

BY MR. ROLES:

Q Mr. Thomas, where do you reside?

A Charleston, West Virginia.

Q What is your occupation, sir?

A I'm Senior Vice President of Coal Operations for Carbon Fuel Company.

Q How long have you held that position?

72 A Since 1974.

Q During the period 1969 through 1973, were you employed by Carbon Fuel Company?

A I was.

Q What were your duties and responsibilities during that period of time?

A I was Assistant Manager of Mines and Vice President of Planning and Development.

Q In that capacity, were you generally aware of the operations of Carbon Fuel, the actions which it took during that time?

A I was.

Q What is Carbon Fuel Company?

A Carbon Fuel Company is a company that produces coal for various markets, using various ways to mine coal and prepare coal for the market.

Q Is it engaged under the name of Carbon Fuel Company in any other business?

A No, it is not.

Q Where are its operations located?

A Its operations are entirely in West Virginia and, essentially, Kanawha and Boone County; Carbon Division being on Cabin Creek and the Winifrede Division being on Fields Creek.

* * *

73 Q How Long has Carbon Fuel Company been in existence?

A Since 1902.

Q And what business has it engaged in since that time?

A Coal mining.

Q I take it that Carbon Fuel Company has a collective bargaining arrangement with the United Mine Workers of America?

A It does.

Q When did it commence having such an arrangement or when did it first recognize United Mine Workers of America as the collective bargaining agent for its employees?

A In the early 1930's period.

Q Has there been a period since that time when Carbon Fuel has not recognized the International Union, United Mineworkers of America?

A There has not been.

Q What association of coal operators does Carbon Fuel belong to for the purpose of bargaining with the United Mine Workers of America?

74 A The bargaining union for national wage agreement is the Bituminous Coal Operators Association.

Q What is the Bituminous Coal Operators Association?

A It's an association of coal-producing companies who join together for purposes of negotiating a wage agreement.

Q Do they negotiate different wage agreements affecting the different mines involved or do they negotiate one agreement?

A Essentially one agreement for bituminous coal mines.

Q All right. Now does Carbon Fuel belong to another association for the purpose of dealing with the mine workers?

A Yes. Kanawha Coal Operators Association, which is an association of coal operators in the Kanawha Valley, essentially Kanawha Valley area; and they perform services for the company in the arbitration—in the administration of the grievance and arbitration procedure under the contract.

Q I believe you testified that, during the period 1968 through 1973, Carbon Fuel had operations at its Winifrede and Carbon Divisions. What operations did it have in its Winifrede Division?

A Winifrede Division, it had several deep mines and two surface mines over that period; five mines in total.

Q What were the names or numbers of those mines in the Winifrede Division?

A Number 6 mine; Number 31 mine; Number 34, otherwise known as the Morton Mine: Number
75 18 mine; and Number 38 mine.

Q What local union of United Mine Workers of America represented the employees of the Winifrede Division?

A Local Number 2236.

Q I omitted to ask this question. What district of the United Mine Workers of America represents all the employees of both divisions?

A District 17.

Q What mines did you have in the Carbon Division during this period of time?

A Carbon Division, we had approximately ten mines over that period.

Q Were there more than one local union representing employees at those mines?

A There were two, yes.

Q All right. Would you tell me first of all what Local or what the numbers of those Local Unions are?

A 6572 and 7626.

Q What mines and related facilities were served by Local Union 6572?

A The Number 9 mine, and a cleaning plant connected thereto, Number 27, 28, 29 and 39 mine.

Q All right. And what Local—what mines did Local Union 7626 represent?

76 A Number 7, Number 20 or 20-A as pointed out earlier. Number 36 and Number 41 and Number 24.

Q I take it, other than the mines themselves, there are a number of related facilities for those mines in the Carbon and Winifrede Division?

A There are.

Q Would you tell the ladies and gentlemen of the jury what those related facilities are?

A Well, at each division area, there is a central cleaning plant, which processes the coal, prepares it for market and separates the unmarketable material from the coal. There is a shop, a rebuilding shop at each of the facilities. There are outside crews connected with each of the two divisions that handle the outside maintenance and construction work.

Q What sort of construction and maintenance work are you talking about?

A Essentially mine-related small construction jobs, road repair work, small buildings, repair shop buildings.

Q During the period 1968 through 1973, what was the approximate annual production of Carbon Fuel Company at both its divisions?

A Averaged over that period about 2.2 million tons a year.

Quin Morton III

81 Q Where do you reside, Mr. Morton?

A 1615 Woodvale Drive, Charleston, West Virginia.

Q By whom are you employed?

A Kanawha Coal Operators Association.

Q What position do you hold with Kanawha Coal Operators Association?

A Executive Secretary.

Q How long have you held that position?

A Since April 1959.

Q What was your occupation and employment prior to becoming Executive Secretary of the Kanawha Coal Operators Association?

A Immediately prior to coming with Kanawha Coal Operators Association, I was manager of two mines, one in southern West Virginia and one in southwest Virginia.

Q How long all together have you been em-
82 ployed in the coal mining industry?

A Since 1931.

Q What is the Kanawha Coal Operators Association?

A Kanawha Coal Operators Association is an association that is incorporated, that is made up of coal producing companies and a few service companies, that primarily deals with the application of the National Bituminous Coal Wage Agreement and the grievance procedure under that agreement.

Q How long has Kanawha Coal Operators Association existed?

A Kanawha Coal Operators Association was formed in 1905.

Q Where is its present headquarters or office located?

A It's at 809 Kanawha Valley Building, Charleston, West Virginia.

Q Is that where you have your office as Executive Secretary of the Association?

A Yes, that's where my offices are.

Q Are the members of the — I believe you said the members of the Association are engaged in the coal mining industry, is that correct?

A That's correct.

Q At the present time, what is the approximate number of coal companies that are members of
83 the Kanawha Coal Operators Association?

A We have thirty-two members now.

Q Are you familiar with the period of time in the industry that was covered by the National Bituminous Coal Wage Agreements of 1968 and 1971?

A Yes.

Q During the periods of time covered by those National Bituminous Coal Wage Agreements, what was the approximate number of members of the Kanawha Coal Operators Association?

A Since I have been with the Association, in 1959 and before, the number of members has ranged from approximately twenty to thirty-four.

Q Does the Kanawha Coal Operators Association function and represent members in any particular segment or geographic area of the coal industry?

A The Kanawha Coal Operators Association membership is in Kanawha and Boone Counties. We have a few mines in Logan County, a few mines in Raleigh County and a few mines in Fayette County. And we have a mine in Mason County. I believe that is the counties we operate in at the present time.

Q Are you able to say approximately how many the total number of coal mines operated by members of the Kanawha Coal Operators Association during the period covered by the 1968 and the 1971 agreements?

84 A I would say the number of mines, separate mines being operated by the membership during that period would range from approximately seventy-five to ninety mines.

Q Can you state for us approximately what the total tonnage of coal production annually those mines and those companies that are members of the Association represented during that period of time?

* * *

A Since I have been with the Association the tonnage has ranged from twelve million tons per year to sixteen million tons per year.

Q Are you able to state what was the approximate total number of employees of the member companies of Kanawha Coal Operators Association during the span of time covered by the 1968 and 1971 coal wage agreements?

A It would range approximately from forty-five hundred to five thousand employees for the member companies.

Q Is the Carbon Fuel Company — I believe it's already in evidence — a member of the Kanawha Coal Operators Association?

85 A Yes, they are.

Q Are you able to say how long it has been a member of that Association?

A To my personal knowledge, it was from 1959 to the present. However, I know they were members many, many years before that, based on the records of the Association.

Q State whether or not all of the production and maintenance employees of all of the coal company members of the Kanawha Coal Operators Association are represented by the United Mine Workers of America for purposes of collective bargaining with their employers.

A All of the employees employed by the coal producers, members of Kanawha Coal Operators Association, belong to the United Mine Workers.

Q Does that situation, however, except supervisors and management employees?

A That, of course, except the supervisory or exempt employees.

* * *

86 What is the practice in that regard with respect to whether or not they are members of the United Mine Workers—that is, those who are production and maintenance employees?

A The contract clearly sets out that except for those people particularly exempt will be members of United Mine Workers except as exempt by law.

* * *

88 Q Are the members of Kanawha Coal Operators Association parties to labor agreements with the United Mine Workers of America?

A They are.

Q How long have the members of the association been parties to the National Bituminous Coal Wage Agreement with the United Mine Workers?

A Since 1941. * * *

Q All right. Now, is it true that for some years, perhaps a relatively short period of time, following 1941, there were separate wage agreements with the United Mine Workers and the so-called southern operators and northern operators in the coal industry?

A Yes. There were two wage agreements made, although they were very similar, from 1941 to, I believe, about 1948.

Q Since 1948 what has the situation been with respect to the agreement to which the members of the Kanawha Coal Operators Association are parties with the United Mine Workers of America?

A About 1948 the Bituminous Coal Operators Association was formed and might be described became the

principal bargaining unit with the United Mine Workers for a national agreement, although the Southern
89 Coal Producers Association, which was in existence prior of that time and had been bargaining contracts with United Mine Workers, continued as a bargaining unit.

For all practical purposes, United Mine Workers and Bituminous Coal Operators Association, from 1948 on forward, negotiated the contract and it was presented to the Southern Coal Producers group for signature. And for that matter, the rest of the coal industry that signed the wage agreement.

* * *

94 By whom are the National Bituminous Coal Wage Agreements negotiated?

A The National Bituminous Coal Wage Agreement is negotiated by a negotiating team or party that is appointed by the Directors of BCOA.

Q And who negotiates on the union side?

A Persons appointed by the International Union.

Q Are the national agreements negotiated at the national level by the Bituminous Coal Operators Association and the International Union of the Mine Workers?

A That is correct.

Q And how long has that been so?

95 A It has been so—it has been a practice since the early part of the 1940's, as far as BCOA and the International is concerned, since about 1948 or '50.

* * *

Q I see. Was Carbon Fuel Company a member of BCOA at the time of the 1968 and '71 agreements?

96 A Yes. They were a member of BCOA through their membership in Kanawha and Southern Coal Producers Association.

Q What is Southern Coal Producers Association?

A Southern Coal Producers Association is an association formed in 1941 as a bargaining representative for a group of southern coal companies and continued in a negotiating capacity for agreements until 1968, when it became a member of the Bituminous Coal Operators Association.

Q Who signs the national agreements on behalf of the mine workers?

A In the 1968 agreement or the 1971 agreement, I believe Mr. Boyle's name appeared. Mr. John Owens' and George Titler's names appeared.

Q And who were Mr. Boyle, Mr. Titler and Mr. Owens?

A Mr. Boyle was the President of the United Mine Workers. Mr. Titler was Vice-President and Mr. Owens was Secretary-Treasurer.

Q Was that the same situation with respect to both the '68 and '71 agreement?

A Yes, sir. And in each of those agreements, I believe, there were listed certain Mine Workers people who had been listed — who were on a bargaining committee or some type of bargaining group. Unfortunately, these don't have them listed — a list of the bargainers here, a list of the people who signed it.

97 * * *

Q Sir, I would ask you if you can state which

echelon or division of the United Mine Workers Association is the bargaining agent to bargain with the operators on behalf of its members?

A International Union

Q And to what organization or echelon of the United Mine Workers do the members of the union belong? Do they belong to the International Union?

A Do the membership of the union belong?

Q Yes, the individual members of the Mine Workers.

A They belong to the United Mine Workers of America.

Q That is what? The name of what? The International?

A International Union.

* * *

99 A Carbon Fuel Company's membership in BCOA is through the Kanawha-Southern associate membership.

Q And when you speak of Kanawha-Southern, are you saying that Carbon belongs to the Kanawha Operators Association, which in turn belongs to the Southern Coal Producers Association, which in turn belongs to the BCOA?

A That's correct.

Q Is the United Mine Workers Organization also divided and sub-divided into sub-divisions which operate in particular geographic areas?

A Yes, that's true.

Q And which district is operative in the area of the mines of the members of the Kanawha Operators Association?

A District 17.

Q Do you know how many UMW Districts there are all together?

A Twenty or twenty-two. I'm not positive of that.

* * *

139 Q Let me ask you this, Mr. Morton, during the period of time we are talking about under the 1968 and 1971 contracts, did you receive reports from your members with respect to strikes in the Kanawha Association?

A Yes. During that period, a company having a strike would call in and report when the strike started. If he knew what was the reason for the strike, he would report it. If there were pickets present, he would report that. Give me some general information. We would log that information in, and I can't say that every company called in every strike. But they did call it in; we did make a record of it that was finally put into a recap form at the end of the year so that we would have some general idea, or reasonably good idea, of the number of days lost and the number of strikes during that period.

Q Did you, at my request, review the recap records that you refer to for the purpose of determining the number of strikes and the number of days lost through strikes?

A Yes, I did. During that period of time, there were a number of strikes reported that occurred during the period of negotiation that I deducted those strikes from this recap

140 Q You mean you have excluded any strike time lost in connection with strikes over the negotiation of new contracts?

A That's correct.

Q Now, the information which you are now giving at my request on the stand, was this based upon your review of these reports and records that you have described?

A Yes.

Q I believe you said that perhaps not all the strikes that occurred were reported to you?

A That's correct.

* * *

144 Mr. Morton, I'm not entirely clear just where I left off, but I believe I asked you if you could tell us the number of strikes for the fiscal year, '68-'69 among members of the Kanawha Coal Operators Association?

A That was during '68-'69, it was seventy-one strikes and eight hundred and nineteen mine days.

Q Do you have similar information with respect to the fiscal year 1969-70?

A Yes, sir.

* * *

145 Q I don't believe that you answered my question as to the number of strikes in the fiscal year, 1969 and '70.

A Sixty strikes; three hundred and seventy-one and two-thirds mine days lost.

Q And with respect to the fiscal year, 1970-71, what was the number of strikes?

A Two hundred and sixteen strikes, four hundred and twenty-nine mine days, and two-thirds. That
146 was two shifts over.

Q Was that figure again?

A Four hundred twenty-nine and two-thirds mine days lost.

Q And with respect to the fiscal year, 1971-72?

A We did not make a recap for the strikes during that year and I don't have the figures available.

Q Did you not make one, or can you not find the records?

A I couldn't find it, so I assume we didn't make it.

Q What about 1972 and '73?

A 1972 and '73 we showed a hundred and sixty-three strikes; five hundred and sixty-three and two-thirds mine days lost.

* * *

147 Q When you received, at your office, the reports of strikes at mines of your members, what did you do upon receiving that information?

A Generally, either myself—if I'm available, I do it—I call the district office, and notify usually Mr. Perry. If Mr. Perry isn't there, maybe Joe Duffy, the Secretary-Treasurer, I believe is his title. If he isn't available, one of the field workers or district representatives who services that particular mine or local union.

Q During the term of the 1968 and 1971 contract, did you communicate the information with respect to strikes to District 17?

148 A Either myself or someone on my staff attempts to communicate any strike communication we get to District 17.

Q Did you do that many times yourself individually?

A I did that many times myself individually.

Q To whom did you communicate the knowledge and information with respect to the strike at District 17?

* * *

A Now. Prior to that time, it was Mr. Humphreys; Mr. Humphreys, Mr. Ellis or some of the field workers. Usually when I communicate, I try to communicate with the District President. If he's not available, one of the district representatives who services that particular mine or local union.

Q What time or times of day did you ordinarily receive the strike reports from your members?

149 A Well, I could receive them sometime between eight-thirty and nine-thirty in the morning. Not always in that period of time. Sometimes they didn't call me till later. But usually it was during that period.

I have received them at home. I have received them in the late afternoon at the office, when I am there. I sometimes receive them at home.

Q What time interval was normally involved between the time of your receipt of the report of the strike and your communication of that information to the District?

A If it is in the morning, as soon as—if there are several mines apparently on strike, I try to run the whole thing down and then report. If it's just one mine or two mines, immediately on getting the report, we call someone at the District office.

Q What time interval—

A In the afternoon, say, from three to four or five o'clock, generally the miners office is closed after four-thirty, I have caught people there after that and reported a strike, and many times I have called a field rep. at his home and reported a strike.

Q Are you able to say what the normal interval of time was between your receipt of information and the time you got it to the District?

150 A Usually within the hour.

Q What information did you give to the personnel at District 17 when you communicated information concerning strikes to them?

A Well, when we would get a strike report, we would try to find out all we can about it. Whether there were pickets; whether they were local pickets or stranger pickets; why the strike occurred, if they knew why it occurred; if they had a grievance pending that they were unhappy about; or basically what might have caused the strike so I can communicate it with the District personnel.

Q Did you at the time you advised them that the mine was on strike, ask the District person that you were speaking to that the District take any action or do anything specific with respect to the situation?

A Sometimes I will ask them, "Are you going to get on this? Are you going to do anything, or will you please see if you can get the mine back to work? Or will you check into this and see if there is any way we can help? But let's get going. Let's get the mine back to work."

Never any fixed pattern of what I say, but the suggestion is always there, let's get the mine back to work.

Q Now, specifically, did you receive this type of information regularly, during the time of the 1968 and
151 '71 contracts, from Carbon Fuel, as well as from other members?

A Oh, yes.

* * *

Q How long has this practice of receiving strike reports and transmitting them to the District been in effect or application at Kanawha Operators, to your knowledge?

A Apparently it was in effect prior to my reaching—or my coming to the Association. However, it has been a practice ever since I became a member of the Association staff.

Q And that is since 1959?

A 1959.

Q Have you had conversations with the District presidents and District representatives concerning certain strikes after you had reported the existence of the strike to the District?

A Yes. Usually during a period of strike when the mines are down, I will contact somebody at the District office during the course of the strike. And find out—try to find out what they are doing about it or
152 find out if there is any information that they have gleaned that might be helpful to me.

Q What information has the District given you in connection with these communications as to what action, if any, they were taking? What response have you gotten from them when you ask them to get the mines back to work?

* * *

A Generally, when I call them, they say "We'll get right onto it and get somebody in the field and try to find out what the situation is." Often they would say, "We'll get a field rep. out to that area." Sometimes a field rep. will call back and say, "I've talked to the men and don't know what we can do about it." But they tell me they are going to take some action and send men out in the field to see what they can do.

* * *

153 Q Did strikes continue after you received that type of information from the District?

A Yes, they did.

Q Did District 17 or any representative of the District, or the International Union, for that matter, ever inform you of any specific action of any other kind that they had taken in connection with a strike either at Carbon Fuel Company or anywhere else?

* * *

A No.

Q Specifically, did the District, District 17 or
154 the International Union, ever inform you of any disciplinary action taken by the International Union or by District 17 against any local or any UMW member for engaging in strikes either at Carbon Fuel Company or at any other mine in the Association?

A No.

Q Has District 17 or the International ever informed you that the charter of any local union had been revoked or that any threat or action to revoke the local union charter had been taken or made because of any strike or strikes at Carbon Fuel Company or any other mine in the Association?

A No.

Q Have you ever been told in connection with any of these strikes by the International Union or by District 17 that either of them had taken any action under the UMW constitution to reverse any strike action by any local union in connection with any strike at Carbon Fuel Company or any other member mine in the Association?

A No.

* * *

155 Q I asked you if the District or International, at any time under the 1968 or 1971 contract, ever told you or informed you of any action taken by them to suspend or remove any UMW official or appointed employee for cause in connection with any of these strikes either at Carbon Fuel Company or at the mine of any other member of the Kanawha Association?

A No.

Q Has District 17 or the International Union ever informed you that any charges or proceedings have ever been initiated against any member or members engaged in any unauthorized work stoppage that resulted in a shutdown of either a Carbon Fuel Company mine or the mine of any other member of the Association?

* * *

156 A Not during the period of time we are discussing.

Q Has either the International or the District ever informed you that they had ordered their members to cross any picket line or to work despite the presence of pickets at any Carbon Fuel Company mine or any other mine of the Association?

A No.

* * *

BY MR. JOHNSON:

Q Have either the International or the District ever informed you or advised you of any disciplinary action taken within the Union against any picket in connection with any of these strikes or work stoppages at Carbon Fuel Company or at the mines of any other member of the Association?

* * *

157 A Not during the period of time we are discussing.

Q That is at any time covered by the 1968 or 1971 Bituminous Coal Wage Agreement?

A That's correct.

Q Has the District or International Union ever informed you or told you that they had ever told any of their members that any of these strikes that you have described, either at Carbon Fuel Company or at any other mine of a member of the Association, were violations of the contract?

A They have never told me that, no.

Q Have they told you—have they ever said anything to you about whether or not they were violations of the Union constitution?

A No.

* * *

159 Q Mr. Morton, did KCOA members report to the Association the names of pickets or individuals involved as instigators of any of the strikes when they made their strike reports to the association?

160 A In many instances — not all, but in many instances they did report the names of people whom various members of their organizations had identified on the picket line.

Q Did the Kanawha Coal Operators Association report that information to District 17 when it made the strike reports that you have described in your testimony?

A When we had the names of pickets, we did give those names to District 17.

Q Was that also true where people were identified and reported to you by the companies as instigators of strikes other than pickets?

A If the company reported to me that a person was the instigator of the strike, or they believed was the person promoting the strike, then I did report those names.

* * *

163 *Quin Morton, III*

CROSS EXAMINATION

* * *

Q You spoke in your testimony yesterday of the miners not being required to be members of the United Mine Workers of America until after the hiring.
164 Is that correct?

A That's the way I read the wage agreement.

Q As Executive Director of KCOA, do you know the practice in the industry of taking on new employees by your various members?

A Yes.

Q Isn't it true, as a matter of fact, that the method by which that is done is for the company itself to receive applications from prospective employees who will be covered, to screen them and evaluate them and then hire them, exclusive of any participation or activity by the United Mine Workers, the International, the District or the Local.

A A man approaches a coal company, an individual who wishes work, and in most cases they approach whoever is in charge of the employment service or the personnel relations at that mines.

Q Personnel manager or something?

A. Okay.

165 Q All right.

A Fills out a request for employment, discusses it with the superintendent or other personnel manager, and if the company, needing men, they usually have a physical examination in most cases — if he passes the physical examination, then they go through the general routine of signing them up for social security numbers and all that data that is necessary; and usually, at that time, they will ask the man — not require him, but ask him to sign what is known as a checkoff slip, which is a form, a checkoff form, that is required by the contract and the law, at which time a man signs for the checkoff of dues and initiation fees for the Mine Workers.

Under the terms of the contract the company is obligated to cooperate with the union in getting these checkoff cards signed.

Q In other words, the employment arrangement and practice does not anticipate the personnel officer at the coal company, or any of the company's officers calling the Local or the District and saying "We need three miners; send them out." There is not a hiring hall type of arrangement?

A There is not a hiring hall type of arrangement in the coal industry.

* * *

169 Q You said in your testimony yesterday, Mr. Morton, that the International or the District at no time told you a number of things about which Mr. Johnson asked. Is that correct?

A Yes.

Q And you said among other things that the International and the District never told you they took action to reverse a work stoppage. Do you remember so testifying?

A Yes.

Q Now, you do know, as a matter of fact, do you not, that when you contacted the District Office, you were told that they would take action immediately to get the men back to work. Is that not a fair statement?

A I think in every case or nearly every case, they would check into it and see what they could do to get the mine back at work.

Q And from your relation with the District during that period of time, you knew that they did take such action as quickly as possible to get the men back to work, did you not?

170 A I know that they sent District Representatives out to the mines, or at least I was told that they did. I was told they had meetings at the mines. On occasions I understand that the District President went to the mines. What action they took other than appearing at the mines and talking to the men, I do not know.

Q Well, I understand that. We are speaking now of what they told you they were doing just as Mr. Johnson asked what they told you, and they did tell you that, did they not?

A They did tell me that.

Q And is it not true, Mr. Morton, from your records, that many of the work stoppages which are the subject of this lawsuit were stopped and the men returned to work within, on some occasions, half a day?

A There were strikes that started that usually they were back — there was times when they were back in twenty-four hours. In recent months, there have been some times they were back after one shift, but —

Q Well, during the period 1969 through 1973, let's confine our answers to that period. That's the subject area of this lawsuit.

A Generally during that period, there were times — there were times during that period when the mines went back to work in twenty-four hours, if my memory serves me right. There were other times that
171 they went for several days before they returned.

Q I understand that. My question to you is, Mr. Morton, there were many instances when, after you made the report, you learned that the mine went back to work after a day, is that not correct?

A There were instances when they returned after a day.

* * *

172 Q No one ever told you that the International called such a work stoppage, did they?

A I don't recall except in the cases of the negotiating periods of the contract. I don't know of anytime — I can't recall anytime that the International authorized a strike.

Q They never told you at any time that the International Union authorized the strike, did they?

A To the best of my memory, no.

Q As a matter of fact, they told you that the International Union disavowed the strike, did they not?

A In many cases, they did.

Q Would you say that was in most cases?

A I would have to say in most cases.

Q And they told you that it was their goal to immediately set out to get the men to come back to work, did they not?

A They told me that they would go out and find out what the strike is about and endeavor to get
173 them back to work.

Q At no time in any of these conversations that you had with the District Office, did they tell you that the District called the strike, did they?

A I don't recall any instance where the District said they had approved the strike.

Q They didn't say they had called the strike, they didn't say they had authorized the strike, they didn't say they had approved the strike, did they?

A Not to my knowledge.

Q And, in fact, is it not true, Mr. Morton, that they disavowed the work stoppage?

A In many cases, they disavowed the work stoppage.

Q And would that not be true in most cases?

A Perhaps. I believe it would be most cases that they disavowed that the strike was authorized.

Q All right. They disavowed and disapproved the strike in all cases that you talked to them about, did they not?

A I wouldn't go so far as to say in all cases. I would say in many of the cases, or most of the cases, they did. I just can't honestly say they disavowed them in all cases.

Q But you can't think of a case in which they didn't disavow?

A Offhand, no.

174 Q All right, sir. In talking with District officers you were never told, were you, that the Local Union or Unions, because there were three local unions specially at the Carbon Fuel Mines, that the Local Union called the strike, did you, or were you? You were never told that the Local Union called the strike, were you?

A I recall many instances where in local union meetings, they had voted to strike.

Q Did you attend those local union meetings?

A No, I was told they had voted to strike.

Q But at the walkout, you were not told that they called a strike, were you? When you called the District Office and reported a work stoppage, you were never told that the District called the strike, were you?

A That the District called the strike?

Q Excuse me, that the Local or any one of the three?

A I don't recall ever being told that the local had called the strike.

Q All right. Now, let me be more particular. With reference to the work stoppages that are the subject matter of this lawsuit, beginning as alleged in 1969 and continuing through 1973, if I ask you regarding those stoppages during that period, and each and every one of them, if your answers given last to me regarding the calling or the authorization or the approval of
175 those stoppages was ever supplied to you by way of information with regard to the International or the District or the Local, would your answers be the same as to those work stoppages which are the subject matter of this lawsuit? Which is to say — maybe it's a bit confusing. Let me clarify it for you. This lawsuit covers a number of work stoppages. There was no time, regarding any of these work stoppages, that you were told that the International called or authorized or approved the strike?

A I don't recall anytime I was told the International approved or authorized a strike during this period on strikes that are subjects of this matter.

Q And that would be true likewise of the District? You were never told that they were authorized or approved?

A I don't recall of any instance where the District told me they approved of a strike.

180 *Daniel L. Toney*

Q Are you employed by the Carbon Fuel Company?

A Yes, I am.

Q What position do you hold?

A Personnel Director.

Q How long have you held that position?

A July of '63.

* * *

182 Q Now you have — are you generally familiar with the manner in which the grievance procedure operated during the '68 and '71 agreements?

A Yes, sir.

Q How did you become aware of that?

A Well, through the contract.

Q And did you also advise employees of Carbon Fuel as to handling of grievances at the first and second steps?

A Yes, sir.

Q How many — very briefly — how many steps were there during those two contracts in the grievance procedure?

A Five.

Q The first two of those steps were handled at the mine level, were they not?

A That's correct.

Q Under the '68 agreement, between who were the first two steps handled?

183 A Repeat that.

Q Under the '68 agreement, who were the parties or who were the individuals involved in the first step?

A The first step was between the grievant and mine management.

Q And who would mine management normally be?

A The supervisor at the mine.

Q Could it be the immediate supervisor or would it be someone else?

A It could be either.

Q At the first step of the grievance procedure, are you aware of any action taken either by the International or District Unions during the '68 and '71 agreements?

A No. sir.

Q The man himself was permitted to handle it as he saw fit?

A That's right.

Q Who were the parties involved at the second step of the grievance procedure?

A Mine management, the grievant and the mine committee.

Q Very briefly, what is the mine committee?

A The mine committee is a group of usually three men that are selected to represent the mine to handle grievances.

184 Q By whom are they selected?

A By their local union.

Q Is it by appointment or election?

A By appointment.

Q Would it occasionally be by election?

A It could be. I'm not sure.

Q Okay. And who represented, at the second step, the company?

A The mine superintendent.

Q At the mine involved?

A At the mine involved. He and the immediate foreman.

Q Now are you aware of any action by the District or International with regard to this step of the grievance procedure?

A No, sir.

Q At the third step, who represented the union?

A A field representative from District 17.

Q And this is an employee of District 17?

A Yes.

Q And who represented the company?

A A labor commissioner from KCOA.

Q Did the District play any part in Step Three, other than representing the union at that time?

A No.

185 Q Did the International play any part during the grievances, that you are aware of, at Step Three?

A No, sir.

Q As to Step Four, who represented the Union?

A The representative from District 17.

Q This is the joint board step, is it not?

A That is correct.

Q And the Board is composed of whom?

A Two members from the union and two members from management.

Q And what is the Board's function at Step Four?

A Just to try to settle the case.

Q Is the case presented to the Board by the respective sides?

A Yes, it is presented by the representative of the union that made the record in Step Three, and the representative from management that made the record in Step Three.

Q What does the presentation consist of? What do they do?

A They present the case to the Joint Board.

Q Do they argue the facts of the contract application for their side?

A Yes, sir.

Q Does the International, or did the International take any part in the fourth step of the grievance
186 procedure during this period of time?

A No, sir.

Q What is the fifth step of the grievance procedure?

A That's where the case was taken to arbitration.

Q And what happens basically in that?

A The union and management present the case to an arbitrator for their decision.

Q Is this done by oral argument or was this done by oral argument or by brief?

A By brief.

Q And it was argued upon the record made earlier in the procedure?

A That's correct.

Q Who prepared the brief for the union?

A A representative from District 17.

Q And who prepared the brief for the company?

A Kanawha Coal Operators Association.

Q Did the International play any part in this part of the grievance procedure during that period of time?

A No, sir.

Q In all steps of the grievance procedure, at this time, as it relates to Carbon Fuel, are you aware of any action by the International Union?

187 A No.

Q In the first steps of the grievance procedure, as it relates to Carbon Fuel, are you aware of any action by the District Union?

A No, sir.

* * *

304 Q Mr. Toney, now that you have described those strikes, we will move on to another area in your testimony.

When a strike was reported to your office, what was your procedure after that strike had been reported to your office?

A To notify Kanawha Coal Operators Association and BCOA.

Q Did you, during this entire period of time, regularly and systematically notify Kanawha Coal Operators Association of the existence of strikes?

A Yes.

Q When did you notify them? Well, let's suppose the strike began on the midnight shift. When would you notify Kanawha Coal Operators Association?

A If it began on the midnight shift, it would be usually after eight o'clock in the morning.

305 Q And if it began on the B shift, or the morning shift, which begins between seven and eight, when would you notify Kanawha Coal Operators Association?

A Probably sometime after eight o'clock.

Q If it began the afternoon shift which begins between three and four o'clock, when would you notify Kanawha Coal Operators Association?

A Sometime after four, shortly after four.

Q Do you know of any instance in which a strike occurred at any of your mines of which Kanawha Coal Operators Association was not notified in accordance with this procedure?

A No, sir.

Q Mr. Toney, in your position as Director of Personnel for Carbon Fuel, have you kept close tabs upon the occurrences during strikes at your mines?

A Yes, sir.

Q What efforts do you know of of the International Union, that the International Union has taken, to either prevent the strikes or to bring them to a halt?

A None.

Q What action do you know of of the District Union either to prevent these strikes or to bring them to a halt once they have begun?

A None.

306 Q What action do you know of taken by the Local Union either to prevent these strikes or to bring them to a halt?

A None.

* * *

Q During the time covered by this complaint, did Carbon Fuel make any efforts to identify strike leaders and pickets?

* * *

A Yes.

* * *

307 Q Is there any policy with Carbon Fuel Company with regard to the reporting of the identities of strike leaders and pickets?

* * *

A Yes, our foremen or any supervisory person connected with the mines are to notify the mine manage-

ment or the management of any pickets that they recognize. They also take down any license number, description of the automobile or anything that they can use to identify someone who has picketed our operation.

Q Is that — state whether or not that information is supposed to be, or is reported to you?

308 A Yes.

Q Has it, or was it, during this period of time, occasionally reported to you?

A Yes.

Q What did you do with that information when it was reported to you?

A Notified Kanawha Coal Operators Association.

Q And for what purpose did you notify Kanawha Coal Operators Association?

A For them to furnish this information to the District.

* * *

Q Do you know of any action by the International, District or Local Unions taken upon the information which you provided?

A No, sir.

* * *

373 *Daniel L. Toney* — CROSS EXAMINATION

Q Mr. Toney, in your testimony, you have said that you knew of no efforts ever taken by the local union or local unions to cause the work stoppage to come to an end. Is that what you said?

A Yes, sir.

374 Q Have you not been aware, personally aware, of meetings that local union presidents have had at mine sites with the employees in an effort to get them back to work?

A I have.

Q Have you not —

A I've known of them to have meetings. As far as getting them back to work — I don't know what goes on at the meetings.

Q Well, shortly after a work stoppage they would have a meeting, would they not, on many occasions?

A Yes, on many occasions.

Q And perhaps far more than you were personally aware of? Would that be a fair statement?

A Some.

Q And you don't know what happened at those meetings?

A No, sir, I have no way of knowing what happened at the meetings.

Q So you don't know what, if any efforts were made by the local officers, to get those mines back in operation at all then, do you?

A No.

Q Were you ever aware of the fact that district representatives went to any of these meetings and ordered the men back to work?

375 A I know that they did go on occasions, go to the meetings on occasions.

Q But you don't know what happened at these meetings?

A No, sir.

Q These meetings were held at or near your office sometimes, were they not?

A Yes, they were.

Q And approximately how far from your office there would those meetings be held?

A Oh, a couple of hundred feet.

Q Many of the stoppages that you have identified in your numerous exhibits here, or plaintiff's numerous exhibits, were stoppages that came to an end after one shift or one day. Would that not be a fair statement?

A That's right.

Q Which means that the miners went back to work after having been out one shift or having been out a half a day or having been out a day or some such thing as that?

A Yes.

Q And on those occasions, there would be meetings of the local union at that situs some two hundred feet from your office at which something occurred, you don't know what, is that correct?

A Well, I can't say that they had a meeting
376 everytime they had a strike.

Q Well, I know, but you don't know that they didn't, do you?

A Well, in the Carbon Division, I would know most of the time.

Q And so far as you know, can you cite any strike that you have spoken of in these exhibits that did not result in the local meeting, either at the mine site two hundred feet from your office, or someplace else?

A No.

Q What you are saying, in essence, is that you don't know of your own personal knowledge whether or not the locals or the District or the International did anything? That's all you're saying? You just don't know?

A I don't know that they did anything to get the men back to work.

Q And whatever they did, you are not aware of it. Is that a correct statement?

A That's right.

* * *

580 *Joe Ellis*

Q Mr. Ellis, are you the Joe Ellis which the defendants in this case indicated they might call who was president of District 17 during much of the period in question?

A I am.

Q Mr. Ellis, when were you first associated with District 17?

A In May of 1960.

Q And what was your job with them at that time?

A I was hired as a representative in the Logan field. I spent about six weeks there and came to Charleston and was a district representative.

581 Q Did you work out of the Charleston office?

A Yes, I did.

Q Did you at a later time become president of District 17?

A I did.

Q What are the duties of the president of District 17?

A To supervise the representatives. You are in charge of the District period. To see that all of the unions are properly served and grievances—

Q In other words, the president is in charge of the District?

A Yes, he is.

Q When did you become president of the District?

A March 15, 1970.

Q And when did you leave as president of the District?

A I left, I believe, in the latter part of May, 1973.

Q During the period that you were associated with District 17, were you well aware of its methods of operation, its structure and its procedures?

A Yes.

Q During that period, how were the employees of the District, including the president, selected?

A We were appointed.

Q By whom?

582 A By the International Union President subject to the approval of the International Executive Board.

* * *

583 Q During that period of time, did the International Union have authority to direct all actions of the district if it chose to exercise it?

A Yes, it did.

Q Mr. Ellis, during that period of time was there a procedure in practice at the union whereby wildcats strikes occurring within the district were reported to the International Union?

A Yes, there was.

Q Would you describe that procedure to me, please?

A Generally if a company experienced an unauthorized work stoppage, they would call the district or if they belonged to an association, such as Kanawha Coal Operators Association, then someone from the association would call the district and advise us there was a work stoppage and where at.

Q To whom would that call come?

A There were occasions when it would come to me. Then there were occasions when they would call the representative who serviced the particular area that the unauthorized work stoppage occurred in.

Q What information would be solicited on these calls?

584 A Well, when they reported the work stoppage, of course, our question was what caused it. And if they knew, they would generally tell us.

Q Was this information reported to the International Union?

A It was.

Q How soon after it was received, was it reported?

A I would say as a general rule it was reported to the National Union by telephone in most instances no later than ten o'clock provided that we heard it early that morning.

Q In other words, by ten o'clock in the morning, all strikes in existence in the district at that time which had been reported to you were reported to the International Union?

A Yes, they were.

Q To whose office were they reported?

A Mr. Boyle's office.

Q And he was—

A President of the National Union.

Q Were these reports followed up by any further or future reports?

A Yes, they were. Each representative that serviced a particular area, if a work stoppage was reported to him, or whoever, then that representative was made aware of it, and he would utilize the telephone trying to get in touch with the various officers or mine
585 committees.

* * *

After the strike was finally terminated and the men returned to work, the representative was required to make a written report on what the company said the strike was over, what he had found out from the meetings he had attended and so forth.

Q Did that report often contain or sometimes contain the names of pickets or instigators of the strike?

A It would contain names at times. I wouldn't say that every report did because many times you didn't know whether a particular individual caused the strike or not.

Q But if the district representative involved, or you, found out what the name of a picket or the name of an instigator of a strike was, was that included upon the written report?

* * *

586 A There was times when names, perhaps, were mentioned in these reports to the National Union. I don't know exactly whether you could say that they were identified as pickets or whether they were identified as the persons or person who we felt instigated the strike. But there were names mentioned.

Q What was done with these reports once they were prepared?

A These reports were submitted to me and then—or my secretary—and then they were transmitted to Washington by mail.

Q Was this regularly and customarily done with regard to each strike?

A Yes, it was.

Q To whom in Washington were these reports sent?

A W. A. Boyle.

* * *

598 Q Between the period of January 1, 1969 through November 1, 1973, do you know of any action by the International or District Union to impose discipline upon a local union for engaging in a wildcat strike in District 17?

A From 1969?

Q From 1969 through 1973, the period of this lawsuit?

A Forrest, I am not sure. During that period of time or shortly before that or after this letter or before this letter (indicating), the International Executive Board was fining local unions. I believe there was an automatic fine of three hundred dollars which could be lowered or raised, but I'm not sure whether it was before this or after.

Q What about during the period of time you were president of District 17?

A While I was president of District 17, no.

Q During the entire period of time, do you know of any action by the District or International Union to discipline members of District 17 for instigating or causing or prolonging an unauthorized work stoppage?

599 A Again, I'm not sure when this five dollar thing taken effect and their actions on that, and the three hundred dollar thing. But I would have to say, to my knowledge, I can't recall.

Q A single instance?

A No, sir.

Q Specifically, do you recall or do you know whether any action was taken against Local Union 6572, 7626 and 2236 which represent the employees of Carbon Fuel Company, whether any disciplinary action was taken against them during the period of this suit for engaging in unauthorized work stoppages?

A If you are still referring to 1969 to the time I left the District, again, I have to fall back that I—it sticks in my mind that there was penalties of three hundred dollars lodged against each local union, but I'm not sure

whether it was before this, but it was not during my tenure as president of the District.

Q Do you recall any action against any employees of Carbon Fuel represented by these local unions for instigating and bringing about work stoppages during that period of time?

A During my tenure as president of the District, no.

* * *

606 *Joe Ellis*

CROSS EXAMINATION

Q First of all, did you have any policy at the district level while you were president of District 17 with regard to unauthorized work stoppages?

A Yes, we did.

Q Did District 17 — you are familiar generally with the content of the work stoppages claimed in this lawsuit, are you not, just generally?

A Generally.

Q Did District 17 or any officer or representative of District 17 call any work stoppage that is the subject matter of this lawsuit?

A No, sir.

607 Q Did District 17 or any of its officers authorize any work stoppage that is the subject matter of this lawsuit?

A Not during my tenure as president of the district.

* * *

Q When learning of a work stoppage at all times — within your district — during the period 1969 to 1973, did you and your district reps and all of your people disavow the work stoppage?

A Yes, he did.

Q You say that you had a policy with reference to these work stoppages. What was the immediate goal of District 17 when it learned of a work stoppage?

A It was to find out the cause of it and get the men back to work as quickly as possible, so long as it
608 did not involve a safety issue.

Q All right. If it involved a safety issue, what was — your object then, I suppose, was to see that the safety situation was corrected?

A If there was a safety situation that concerned the whole mine then certainly we would want that corrected before they returned underground. If it was a safety question concerning a particular area of the mine and did not involve a danger to the rest of the mine, we would try to get them back to work and clear up the safety question, whatever it might be.

Q All right, sir. Now, what efforts or what system or what program of activities or efforts did you have during your tenure as president of District 17 to accomplish your immediate goal of getting the men back to work and the mines back in operation? Tell us what you did.

A When we were first notified by the association, or if it was an independent company, in some instances I might be notified. I think in most instances they would notify the representative that service the particular area.

He was serviced with first attempting to contact the officers and mine committee by telephone. If that failed, then he was immediately dispatched himself to the area of where they lived to try to find out what their side of the story was, to make arrangements for getting the people back to work.

609 Q In the event that failed, and in some instances it did, what was the next step?

A Well, generally you would try to make a determination when you went out there — the representative would, depending on what the local union officers told him. If they indicated to him that they felt that the employees would return to work on the following shift or on the next shift which would have been the same shift that they came out on, then they would make a judgment as to whether or not that was possible. If they felt that this would happen, they would not insist on the local union president calling a meeting.

If this was not forthcoming in regard to the returning to work, then they would insist on a meeting being called, a local union meeting, in order to try to get the members of the union back to work.

Q Who attended these local union meetings under this system?

A As a general rule, the representative who serviced the area that the work stoppage occurred in.

Q And were the local officers asked by your representative to attend those meetings?

A Oh, absolutely. Local officers and mine committeemen were asked to attend.

Q Tell us, if you will, who your representatives
610 were during the period of 1969 through 1973, Mr. Ellis.

A Well, I think, Jim, that I could better tell you who the representatives were when I became president.

Q That's what I asked, really. I'm sorry that I broadened it. I forgot you didn't come until March of '70.

A The district representatives were Elza Johnson, Raymond Thompson and Samuel Calloway. We had an International Representative who was Emory McCoy.

Q And were these district representatives the people from your office who went into the field in your three-tiered program to get the people back to work?

A Yes, sir.

Q Now with reference to returning people to work, state to the Court and jury what priority you as district president assigned to that responsibility of your office?

A Well, unauthorized work stoppages took top priority. I even had schedules made up listing the representatives, and if there was a work stoppage in Representative A's area and at a local union and he had, say, grievances set up in that area for the same day, this schedule assigned a representative to take care of his grievances and he was required to attend meetings, if there was one scheduled, or make an effort to get the people back to work.

Q You mean to say that you would shift re-
611 sponsibility to be sure you had a district representative at the site of the stoppage?

A Yes, sir.

* * *

Q Have you ever during the course of your
612 tenure as president of District 17, Mr. Ellis, had occasion to personally go to the site of labor difficulty in an effort to accomplish the goal of getting the mines back to work?

A I have.

Q Did that occur shortly after you assumed the position of presidency in 1970?

A Yes, sir.

Q Do you think that would have occurred approximately a month or two after you assumed that?

A I would say I believe it would be in that general time frame.

Q What company did you visit or what mines did you visit or what company's mines did you visit in that connection?

A I didn't visit any mines. I visited a schoolhouse where they was having a local union meeting which involved the employees of Riverton Coal Company.

Q All right. It is alleged in this proceeding that a stoppage occurred at the Carbon Mines on 4-27, April the 27th, 1970 at both the Carbon and Winifrede Divisions, and the cause which has been assigned here is picketing out of the mine by the Riverton Coal Company employees. Would that be the instance that you are speaking of now in your testimony?

A Well, I recall it was shortly after I became president of the district and that it was Riverton Coal
613 Company. I can't be sure of the date.

Q Well tell us, if you will, Mr. Ellis, what was done in connection with that work stoppage?

Before you answer that, let me ask you a more specific question.

Did you have situations when you were District President of District 17 involving one mine or one local picketing out another mine or another local working for another company entirely?

A Yes, I had that experience.

Q When you had that experience, did you place your emphasis on efforts to return at the source site mine?

A Yes, sir.

* * *

614 Q State, in the setting of one mine's employees picketing out another mine's employees, where your area of emphasis was?

A Well you always go to where you feel your problem arises at and try to resolve that issue. And if you resolve that, then your problem in regard to picketing at other mines would be resolved also.

Q Now describe what you did in connection with the visit to the schoolhouse in April or thereabouts of 1970 when you talked to employees of the Riverton Mines.

A Well, I got a call in my office in the morning and it seems to me like it was before ten, and again, I'm trying to recall from memory. And I believe it was a Tony Deramio advising me that the meeting which had been scheduled at Crown Hill for the Riverton employees and other—officers of other local unions, that Mr. McCoy had arrived there who was a representative at that time—

Q Was that Mr. Emory McCoy you referred to earlier in your testimony?

A Yes. And that he was advised by someone—I don't know who—or some people—that they were not
615 going to have a meeting so long as Mr. McCoy was there.

I asked Mr. Deramio to go back and advise the people gathered there that I would be up there and I would appreciate it if they would wait and listen to what I had to say.

Apparently, Mr. Deramio done that because when I arrived up there, there was a large crowd.

* * *

A Well, I drove up there and parked my car and walked across the railroad tracks and up the walk to where the local union meeting was being held. And I went in and we had a meeting.

Q Did you identify yourself? Did they know who you were?

A I didn't have to identify myself. Most of them knew me.

* * *

616 Q Did you order the men to go back to work at that time?

A Yes, I did.

Q And did they?

A They started back that evening on the afternoon shift and according to my memory, I think most everything was back on the day shift the following day.

* * *

Q Were all of your district representatives instructed as to the policy of District 17 for action to be
617 taken in connection with these work stoppages?

A Yes, they were.

Q And were they directed by you to carry out the policy you had established?

A Yes, they were.

Q Did you ever have an occasion when one of your district representatives failed and refused to carry out your policy in connection with attending a local meeting involving a work stoppage?

A Yes, I did.

Q What did you do as a consequence of his failure to attend that meeting?

A I called him in my office and confronted him with the fact that he had not attended a local union meeting where they had an unauthorized work stoppage in progress.

I gave him a chance to state to me that this would not happen in the future, that he would attend those meetings when directed to do so or that he would attend them even if he wasn't directed, if he was aware of a work stoppage and I was not there.

His response to me was that he would make up his own mind which meetings to attend, so I fired him.

Q Who was that now?

618 A Elza Johnson.

Q Do you know approximately when he was fired?

A Pardon?

Q Do you know the approximate date when he was fired?

A Oh, it was in the early part of 1973. I don't recall the exact date.

Q You spoke of, earlier in your testimony, in answering a question, that if a district representative from your office saw that the men would go back on the next shift, or on the same shift that the men came out on, that he would have to use his judgment as to whether or not that was the best practice to follow. Did you not say that?

A Yes, sir.

Q Now what do you mean by going back on the same shift they came out on?

A Well, that would be like if the day shift came out today, it would be the following day on the day shift that they would return.

Q Was that a practice that grew up in some of the districts or some of the locals in your district?

A Yes, it was.

Q Do I understand that to mean that if the mines closed on the hootowl shift, they wouldn't return until the hootowl shift on the next day?

619 A Yes, sir.

Q I want you to describe to the jury the attitude and the policy of District 17 with regard to that practice and the efforts you took to correct it and the success of your efforts.

A Well, all representatives was directed to exert every effort to get this practice stopped at their local unions. In my meetings with various local officers, I attempted the same thing—to discourage that policy of the shift out, the shift back.

I think we had some degree of success in that area during my tenure as president of the district.

Q It is implicit to your answer, but let me ask you directly. Did the district ever endorse or approve of that practice?

A No, sir.

* * *

620 You did take action to eliminate that practice?

A Yes, sir.

Q Mr. Ellis, how many locals—how many local unions including the ones at Carbon Fuel Company and all of the other local unions in your district did you supervise during the period of your presidency?

A It fluctuated from, I think, about ninety-five to maybe a hundred and one or a hundred and two.

Q And what is the scope geographically, as best you can portray it to us of the jurisdiction of District 17?

A Approximately a hundred and eighty square miles.

Q Did it embrace more than Kanawha County?

A Yes, sir.

Q What other counties did it include if you know and remember?

A Kanawha, Boone, Logan, Mingo, part of Wyoming, part of Raleigh, part of Fayette. I get this county on the Ohio River confused—Mason County, Lincoln County, Logan County.

Q I think you mentioned Logan.

A Did I?

621 Q Yes. Would that be essentially it?

A That would be essentially it, yes.

* * *

635 Q Mr. Ellis, will you now turn to page eleven, please, Section Three. Does this provision appear in that constitution? "If in the judgment of the officers of the international, district, or sub-district union, any local union has taken any action opposed to the interest of the United Mine Workers, the International Union, or the district or sub-district unions having jurisdiction over the local union shall have the right to reverse the action of the local union."

A Yes, sir, it is.

Q During your tenure with the district and during the period of this litigation—1969 through 1973—were you aware of any action by the international or district to reverse the decision of a local union to go on strike?

A That depends on what you call action. Certainly we got out there and the initial action was always reversed by the local union when they returned to work.

Q Did you tell them, relying upon this provision, that their decision to engage in a strike was reversed and that they were to go back to work?

A I didn't tell them that, no, sir. Not in those words.

* * *

637 Q Did you instruct your district officials or did you, when present, invoke this provision of the constitution to reverse the decision of the local union to continue the strike?

MR. McINTYRE: That's been asked and answered.

THE COURT: Overruled. Answer the question.

A Of course, that's rather hard to answer. If you say did we just give up and didn't try to get them back to work, no. If you are asking, did I revoke that by a

letter or an order, no, I did not. But generally speaking, after a local union meeting, the representative, if it was any distance from a local union district office, would call me and advise me of what happened, and when they done this a meeting was already scheduled for the following day, or if in the representative's judgment at that time he felt that something else was going to have to be done in order to get the men back to work, then judgment was made on that.

* * *

Joe Ellis — RECROSS

650 Q Mr. Ellis, you read from the constitution a moment ago at the instance of Mr. Roles regarding reversing action on the part of the local union, is that correct?

A Yes, sir.

Q Did you take action which was contrary to the action taken by the local union in these work stoppage situations during the course of your presidency?

A Yes, sir.

* * *

DEFENDANTS' WITNESSES

682 *Bernard Barker*

Q Mr. Barker, where do you live?

A Sharon. West Virginia.

Q Where are you presently employed?

A Carbon Fuel, Winifrede Division Cleaning Plant.

Q How long have you been employed there?

A Six years.

Q Were you working at Carbon Fuel then in 19... 1970?

A October '70.

Q Until the present time?

A Right.

* * *

707 Q Now, with regard, generally speaking, to work stoppages that affected you at the Carbon Division, cleaning plant, when work stoppages occurred, are you aware of the action taken by Mr. Kincaid — was he at all times president of your local?

A No, Charles Brooks was there part of the time when I first went to work. Charlie Brooks.

Q And also Mr. Kincaid was your president?

A Right.

Q Would you tell us what steps they would take in an effort to get the employees of the mine to return to work?

A Of course, Lester and Charlie were always there when there was a work stoppage and they urged us to go to work.

Q Well I'm not sure that's clear. You say they were always there.

A Well, when a work stoppage and people, you know, when they got word of it — Lester, if he was the president was there and if Charlie, Charlie was there.

* * *

708 Q What would they do — what would they tell you about your responsibility of returning to work?

A They would tell us that we had to return to work. At that time we had to return to work before they could meet with the company.

Q Did the men respond to their directives to return to work?

A Not always.

Q Did they sometimes?

A Yes.

Q If these men — Mr. Brooks and Mr. Kincaid — would ask you to return to work and you wouldn't, what step would he then take?

A The district representative which was Sam Calloway.

Q What would he do?

A He would come up and try to get us to return to work.

709 Q Did he order you to return to work?

A Yes.

Q Did he tell you it was your responsibility to work?

A Yes.

Q And did that on occasion result in your returning to work?

A Yes.

Q Did that always result in your returning to work?

A No.

Q If there was a work stoppage that lasted for three or four days, what else would be done or what all would

be done as a continuing effort to get you to return to work?

A Well, of course, Lester and then Sam and sometimes they brought another representative in which was Ray, I think it's Thompson. Raymond Thompson. He would come in.

Q And what would he tell you?

A The same thing. Return to work.

Q Order you back to work?

A Yes.

Q Was Raymond Thompson a representative of District 17 of United Mine Workers?

A Yes, sir.

Q And when he would come in, would he sometimes be able to get you to go back?

710 A Sometimes.

Q And sometimes not?

A Right.

* * *

Q State whether or not if their first effort was unsuccessful in getting you to return to work they discontinue their efforts or continue their efforts?

A They continued their efforts.

Q How long did those efforts continue?

A Until we went back to work.

* * *

724 *Bernard Barker*

CROSS EXAMINATION

Q Now you have testified that when you have a strike up there, the district representatives come out and order your men to return to work and that sometimes those orders are disobeyed. Is that true?

A Yes.

Q What happens to the men who disobey the district's orders?

A Nothing that I know of.

Q You mean the district doesn't — what does the district do? Do they come out and order them again?

A Yes, they keep coming back until we go to work.

Q They keep coming back and ordering you go back to work until you get back to work?

A Yes.

Q And some cases do they request that you go back to work rather than ordering?

A They usually tell us our responsibilities and tell us we have to return to work.

Q But if you don't return to work, what happens?

A They come back.

Q And tell you again?

A Yes.

Q Until you do go back?

725 A Yes.

Q Do they ever tell you that anything would happen to you if you didn't go back to work?

A Well, they have never told me. Whether they have told any other people, I don't know.

* * *

Bernard Barker

REDIRECT EXAMINATION

Q Had disciplinary action been taken against members of your local, would it have improved or aggravated the situation regarding the duration of the strike?

A It would have aggravated it.

* * *

768 *William Clifford Cline*

Mr. Cline, where are you employed?

A I am employed for Carbon Fuel Company at the Carbon Division.

Q And are you a member of the UMW?

A Yes, I am.

Q Now, how long have you been employed at Carbon Fuel?

A Since September 29, 1965.

Q And are you an officer of your local union?

A Yes, I am.

Q What local union is that?

A 6572. I am president.

* * *

776 Q And would you tell the jury, please, for the period 1969 through 1973—what the response of your local union officers would be to an unauthorized work stoppage?

A Well, I have had the pleasure of knowing several of the—the two presidents before me and being as I had been a local officer at the previous company I worked for, I paid close attention to their actions to see how business was transacted at their local. And they would immediately, if a work stoppage occurred, speak to Mr. Daniels. He would get right to the party who was actually involved in it and he would get the evidence and they would most of the time take them personally and go to the company and try to settle something, to settle it if they possibly could.

And if there was no settlement reached there and the mines was on strike, the president would put up a sign at Decota calling for a special meeting for all members to attend.

* * *

Q And were any of the local union meetings there were called actually held? Did you hold local
777 union meetings?

A Oh, yes.

Q And what would happen at those local union meetings?

A They would discuss the problem and most of the time they would already have a field representative there. At that time, it was either Mr. Raymond Thompson or I think Mr. McCoy came up there a few times. I'm not positive on Mr. McCoy but I am positive on Mr. Thompson.

And they would talk the problem over and tell them the circumstances of what would happen if they didn't get it back into operation and they would also tell them—advise them if they did not know all the steps, what could be done and what support they would give them and all to get the men back to work.

Q Were there any directives to return to work?

A I didn't quite hear you.

Q Did the local or district officials say anything about going back to work or not going back to work?

A Mr. Raymond Thompson's advice was always to go back to work and "I will immediately take care of this situation."

* * *

779 Q You mentioned that Mr. Thompson from District 17 had been at your local union meetings which were called after a stoppage occurred. Have any other district representatives or officials of the
780 district been at your local union meetings?

A Yes, sir. I have had the pleasure of even having the President of United Mine Workers there besides, as you know some of the attorneys, the executive board members, field representatives—I believe I have had them just about all there.

Q What actions or statements do those persons take or make?

A They try their best to answer the questions as put to them and then tell them the consequences what will happen if they don't go to work and advise them as attorneys of their legal rights on this here and their interpretation of this particular part of the contract which is in dispute.

* * *

785 *William Clifford Cline*

CROSS EXAMINATION

Q And you testified in these local union meetings that you asked the men to return to work and presented arguments to them as to why they should return to work?

A Are you referring to since I have been president what I done or what the other presidents done?

Q I'm talking about the whole period of time.

A Yes, that's on a general way.

Q Would you order them or did the other local union presidents order the men to return to work?

A Yes.

Q Oftentimes the men did not follow those orders, is that not true?

A That's true.

* * *

Q Were you aware of any action taken against the men for disobeying an order to return to work?

786 A No.

Q All right. Now you have said that local union officials have described to the men the consequences of their failure to return to work. Is that true?

A Yes, sir.

Q What consequences did they tell them they would encounter?

A They could be fined and even go as far—the local union could be fined, the individual could be fined and

they could even go as far as pulling the charter from the local union.

Q Okay. Did the men always in response to these statements of consequences return to work?

A Not always.

Q And when they didn't return to work, was the local union fined, the men fined or the charter revoked?

A I don't know of any such case.

* * *

797 *Harold Edmond Burke*

Q Directing your attention to the period 1969 through 1973, Mr. Burke, were you an employee of the Carbon Fuel Company?

A Yes, I was.

Q When did you begin your work there?

A I started in November of 1968.

Q And when did your work there conclude?

798 A During that period of time, the first departure was in July of 1972.

Q Did you return to work there after at Carbon Fuel?

A I returned in September of '73 until February of 1974.

Q All right. And during the period of time you were off, '72 through '73, did you work during a part of that period at the office of District 17 here in the city of Charleston at the United Mine Workers?

A Yes.

* * *

800 Q What happened when the order from the local did not result in your return to work?

A Of course, as I said, always we were directed to return and if no action was taken, if no back to work movement would occur, our local president would again reschedule meetings immediately. If we were to return on the four o'clock shift and no action, usually
801 there was a meeting that evening and if not usually six o'clock the next morning.

A At that meeting, was anybody present other than the local officers?

A A large majority of the time the district officials were always in attendance when there was a work stoppage, a district representative.

Q During this period of time, Mr. Burke, who was the district representative who was in attendance at those meetings?

A During this period, Raymond Thompson was our field representative.

Q Do you remember the name of any other district officer who attended those meetings during that period of time?

A Emory McCoy—Mr. Thompson started serving our local, I think it was around late '68 or early '69. I had not been involved in late '68 so I would not know of any other representative.

Q Only Mr. McCoy and Mr. Thompson?

A Right.

Q What, if anything, would the district representative tell the men at that meeting?

A Again, he would always direct us back to work after discussing the problem to an extent. We would always be directed to go back to work.

Q Did that district directive result in the men returning to work?

802 A Again, sometimes it would and sometimes it wouldn't.

Q And if it did not, what would happen next?

A Well, at times it would just be a continuing process where the problem—if meetings would be scheduled during this work stoppage, but again, meetings would be rescheduled. It was just a circle basically.

Q And how long would these rescheduled meetings continue to occur?

A Immediately, you know—again, if the order was given on eight o'clock shift and no action, the meeting could be scheduled at two p.m. or one p.m.

Q When would the meetings cease to occur?

A When the first back to work movement would happen.

* * *

803 Would you state for the benefit of the Court and jury what the district policy was in that regard.

A Again, it would be upon any information of any walkouts, work stoppages, the district would immediately dispatch one of the field personnel. In some cases, schedules were rearranged to get the representatives to the work site, to the meetings, to get the men back to work.

Q What was the policy of the district office with reference to requiring attendance at those meetings by district representatives?

A I would say it is probably a hundred percent participation where a district rep. is always at a back to work meeting, to my knowledge.

Q Did that policy of the district continue throughout the time you worked out of the district office?

A Yes, it did.

* * *

813 *Harold Edmond Burke*

CROSS EXAMINATION

Q You have described what happened at these meetings and I don't want to belabor the subject, but as I understand it, you say that district representatives were almost always or most commonly present at these local union meetings during a strike?

A Yes, that's correct.

Q And that they urged the men to return to work at the end of the strike?

A Directed, yes.

Q Did they ever state what consequences or further action might be taken by the International or the District unions in the event they did not do as they were told?

A We were always advised of the proceedings that could happen, yes.

Q What were those proceedings?

A Federal court, the unions constitution. A number of things were discussed.

Q Was anything said in these meetings about any disciplinary action, such as fines of the local or individual members of the local if they refused to comply with the constitution and the orders of the district or international union and return to work?

A I don't think it was discussed that openly. I think everyone was aware of the consequences that
814 sometimes was not corrected.

Q But you don't recall that specifically being said by a district representative in any of the meetings that you attended?

A Oh, yes. Yes, it has been said.

Q Was this said at each meeting in a succession of meetings during a strike?

A It depended on—we were always directed to return to work and we were always advised in a general area of the consequences.

Q But none of those consequences ever came to pass, did they?

A As far as discipline?

Q Yes.

A No, not to my knowledge. It could inflame the situation.

Q There weren't any fines against the locals and there weren't any fines against the individuals or any other action to enforce the constitution, were there?

A Not during my work.

* * *

817 *Jack Perry*

Q State your full name, please.

A Jack Perry.

* * *

Q And by whom are you presently employed?

A District 17.

Q And in what capacity are you presently employed?

A I am the District President.

Q And how did you become District President?

A Through the elective process.

Q And when were you so elected?

A On May 20 I was appointed on May 21, '73. Certification came through some time later.

Q Then prior to becoming District President, were you a coal miner?

A Yes, I worked underground more than twenty years.

* * *

818 Q Now after you became District President, were you aware that there were work stoppages at the Carbon Fuel Mine occasionally? I'm speaking of the period now between your election and October of 1973?

A Well, I may be vaguely aware of some stoppages during this period you speak of, but I know of nothing of any real magnitude. Nothing that would stand out.

Q And just generally, how did you become aware of these work stoppages?

A Generally, we asked our membership to advise us, you know, our local union officers to advise us when there is a work stoppage and we also called the association people. They are the first people usually to know. Because they are informed from the mine if there is a work stoppage. And we called the association to find out if everything is working.

819 Q And when you learned of a work stoppage, what did you do?

A Well, when we learned of a work stoppage, the representative who services this particular local union gets in touch with the local union officers. He directs these people back to work. If no action is taken then, he directs them to have a meeting and he will be in attendance at this meeting.

Q And at that time, if the men don't return to work, are there subsequent meetings held?

A Yes, there is.

Q And is he in attendance at these meetings?

A Yes, sir, he is also in attendance at these.

Q Now was it a policy that the district representatives were required to be there?

A Yes, they were.

Q To the best of your knowledge have any of the district representatives not attended or followed out that policy?

A There may have been times since my tenure in office —

Q During the period '73 to the end of '73?

A I have no knowledge of that, no

Q Who at that time, from early '73 until October of '73, who was the field rep. who would have serviced the Carbon Mines?

A I believe that was Mr. Raymond Thompson's responsibility.

Q And to the best of your knowledge, did Mr.
820 Thompson always follow the policy set out by the district?

A Yes, he was a very dedicated representative.

Q Now, could you tell the jury what priority the district, during your tenure, gave to work stoppages?

A Work stoppages received the highest priority.

Q By that what do you mean?

A I mean Number one priority, to terminate a work stoppage is our most important function, is to see that collective bargaining agreement is abided by.

Q And what would happen if that field representative that serviced a mine had previously engaged—previous engagements or other duties at that time?

A Someone else would be assigned to the duties he had and he would be dispatched to the meeting.

Q Mr. Perry, during the period after you were elected until the end of August or October of 1973, did the district ever call any work stoppages?

A I don't recall. No, the district has never called a work stoppage.

Q Thank you. Have you ever authorized one?

A No, sir. I don't have any power to do so.

Q Who has the power to call work stoppages?

A Only the International Union.

Q And during this period, did the International, to the best of your knowledge, ever call or authorize
821 a work stoppage in District 17?

A No.

* * *

823 *Jack Perry*

CROSS EXAMINATION

Q It is in evidence, Mr. Perry, from your testimony and the testimony of others, when strikes occurred, district representatives were sent out to tell the men to stop the strike and go back to work?

A Right.

Q And they regularly did this at local union meetings?

A Yes.

Q And they did it during the period that you were president from May 21, 1973 down to the cut-off date, in this case in October 1973?

A Well, I certainly assume it was done in every case since it was the policy of the district.

Q And as a matter of fact, that had been the practice in the district for a long time going back years, hadn't it?

A That was the practice prior to my coming into the office, yes, sir.

Q Did you know from your own association with the industry and your own experience that they had been

doing the same thing for years in connection with work stoppages?

A I know this was practiced where I worked at Logan County also, yes, sir.

824 Q And very often sending a district representative out to a local union meeting to tell them to go back to work proved futile, didn't it?

A Yes it did.

Q They didn't go back to work in many instances, did they?

A That's true.

Q And it might be days later before they did, isn't that true?

A That sometimes was true, yes.

Q And when they finally did go back to work the same thing might happen and frequently did happen in a few weeks or months later or even days later, isn't that true?

A I suppose that's true, also.

Q And the process was repeated and repeated?

A Yes.

Q And it didn't solve the problem of these unauthorized strikes, did it?

A No, it apparently hasn't done that, no.

Q Do you know of any instance when the International or District 17 for that matter has taken any other disciplinary action or enforcement action of any kind with respect to these repeated work stoppages, other

than to send district representatives out to tell them to go back to work and urge them to go back to
825 work?

A No, sir. I would like to expand on that a bit, if I could.

MR. JOHNSON: You have answered my question.

THE COURT: If you want to explain the answer, go ahead.

THE WITNESS: It is my opinion that my first obligation should be to confine a work stoppage to the area that it is and to try to settle it there. To impose discipline on individuals when you have a spontaneous action, no glaring distinction would inflame the situation and possibly cause it to expand which we don't want it and I'm sure management doesn't want.

BY MR. JOHNSON:

Q Unfortunately, though, they very often do expand, don't they?

A They do.

* * *

865 *Lester Kincaid*

Q Mr. Kincaid, are you now—let me put it this way—have you ever been the president of Local No. 2236?

A Yes, sir.

Q When did your office and term as president of
2236 begin?

A I believe, Mr. McIntyre, that I began my term in

1969. And before that, I was vice-president under
866 Mr. Brooks and he had inner ear problem and he didn't work for quite some time and I had to take care of it as the vice-president.

* * *

876 Q Mr. Kincaid, as president of Local 2236, I want you to describe to the jury what you did and what steps you took and what action was taken by you in connection with work stoppages which occurred at the Winifrede Division of Carbon mines from the period 1969 through 1973?

A Anytime, Mr. McIntyre, that I had a work stoppage I got hold of the district and I told them. They would want to know and I wouldn't call the district until I found out what the problem was about and then I would call the district and sometimes I'd have to get some of it from the company and some from my men. I would have to call them at home. And I would get ahold of them then and find out what the cause of the work stoppage or why they were out and I would call the district and I would have a meeting the next day.

877 Q Excuse me. Ordinarily during that time, were you working yourself on the day shift or not?

A A lot of times I was working and I knew nothing about it until some of the motor runners would tell me.

Q Tell the jury which shift during that time you were working, principally?

A I was working at Winifrede at Carbon Fuel Company uses the alphabet A B and C. A shift is the night shift or the hootowl, and C shift is the evening shift.

Q And which shift did you usually work during the period 1969 through '73?

A I worked the B shift.

Q That's the day shift?

A That is the day shift, yes, sir.

Q Did you receive calls at all hours of the day and night?

A Sir, I would receive calls and the motor runners would tell me which outfit had went out, that 34 had went back and then I would have to start and try to find out why they went back. Seems like nobody didn't know, the company or nobody else. And I would try to find out who and why they went back.

Q Suppose you got a telephone call after mindight that a work stoppage has occurred. What would you do?

A I would go to work the next morning.

878 Q And if the work stoppage continued, what did you do then?

A I would get them all in the bath house and we would have a meeting there and discuss the situation.

Q What, if anything, did you tell them?

A I would tell them the seriousness of the work stoppage and how soon that Mike Cohen would be with me with a TRO and if we didn't go back to work, our local union would be in contempt of court and subject to a fine.

I explained that to them dozens of times, Mr. McIntyre.

Q State whether or not you gave them any orders or direction regarding returning to work?

A I always give them orders to return to work. I have never shirked my responsibility.

Q How soon would your first contact with involved miners be after you first learned of a work stoppage, ordinarily?

A I would generally have my meeting the next day at twelve o'clock and then I changed it to eleven in case they would go to work so they would have time to go home and get ready to go to work.

Q And was it at this meeting that you told the men to return to work?

A Yes, sir.

879 Q Did you do that in connection with every work stoppage that occurred at the Winifrede mines during 1969 through 1973?

A Yes, sir.

Q What was the result of your ordering them back to work? Did they go back?

A Sometimes and sometimes they didn't.

Q Now on the occasions when you—well, you say sometimes they did?

A Sometimes, yeah.

Q Did you have work stoppages which lasted only a shift as a result of their agreeing to go back?

A Yes, I have had one shift.

Q Have you had stoppages lasting as little as a day because of your ordering them back to work?

A They've lasted one day and then maybe longer.

Q Well, state whether or not you have been able to get them back on occasion within a half a day or a day?

A I have got them back to work in a day but I don't recall which strike it was, but I have got them back in one day's time.

Q All right. Now, assuming you had this meeting, ordered them to return to work and they didn't go, what did you do then?

880 A Whenever I ordered them to return to work, I would go up on the A shift on the hootowl and see if they was going to return. Then I would talk to them there again. Then I would give them a chance to go back then. On other days, I would get up the next morning and go to work I would go up and if the day shift didn't go and someone then would say, the hootowl didn't work, so we'd go in the bath house and have another meeting and if the day shift didn't go, if the B shift didn't go, Mr. McIntyre, then I was there that evening with the C shift trying to get anybody that I could get underground. I didn't care who went.

Q Did you ever—what would happen if you would notify the district about the existence of this stoppage? What, if anything, would the district do?

A At that time when I would notify the district, Mr. Sam Calloway would always come to my meeting.

Q And within what period of time after the onset of the work stoppage, would he be there, ordinarily?

A When I'd call him, he'd be there at the meeting that day at noon.

Q All right. And at those meetings, what, if anything, did Mr. Calloway do or say to the men regarding the work stoppage?

A Mr. Calloway always got the floor, I always gave him the floor and we only discussed the work
881 stoppage. Not ten thousand other things. We discussed the work stoppage in my local union. And Mr. Calloway would get up and tell them they would have to go back to work before the grievance would be handled, and we would get the grievance handled "if we can get you back underground" and he would tell them the seriousness of the work stoppage.

* * *

898 *Lester Kincaid*

CROSS EXAMINATION

Q Now, Mr. Kincaid, you testified that as president of the local union, you immediately upon the learning of a work stoppage, called the district, is that true?

A Yes, sir.

Q And that was your uniform practice throughout this entire time?

A Yes, sir, I used that all the time.

Q And you usually found out about it within a shift anyway of when it occurred?

A Probably, yes.

Q So within a shift the district, through this entire time, was aware of the existence of a work stoppage at your mine?

A They probably knew it before me.

Q Because Kanawha Coal Operators told them even before that?

899 A Yes, sir.

Q So Kanawha Coal Operators got the word to them even before you did, usually?

A Oh, yes, yes, sir.

Q They would have the word to them within an hour or so, wouldn't they?

A They'd probably have it to them within fifteen minutes if the district was open at that time.

Q Now you said that as soon as you had a work stoppage, you called a local union meeting and at that local union meeting you called it at the bathhouse and at that local union meeting you told them about the seriousness of the work stoppage and you told them that the company would get a temporary restraining order from federal court to get them back to work and told them if they violated the temporary restraining order, they might be held in contempt of court and fined. Is that what you told them?

A Yes, sir, I told them that several different times.

Q Did you tell them anything about the seriousness of it, other than the possibility that they might get fined in federal court?

A Oh, yes. I told them about that because every time—

Q I mean anything other than federal court?

A I would tell them that they could be fined
900 through the international union.

Q And did you make specific reference to the constitutional provisions relating to international discipline and district discipline for engaging in an unauthorized work stoppage?

A The biggest part of them knew that already, Mr. Roles.

Q So you didn't need to tell them?

A I figured the biggest part of them knew about it already.

Q Did you tell them about that every meeting you had or practically every meeting?

A It was just like a scratched record, Mr. Roles. I told them each time over and over.

Q You kept telling them again and again?

A Yes, sir.

Q And you kept ordering them back again and again?

A Yes, sir.

Q Now you ordered them back everytime and you warned them about international discipline everytime. How many times has the international disciplined them?

A None as I know of.

Q How many times has the district disciplined them?

A None as I know of.

Q Your orders weren't worth a dime, were they?

A I believe we said that in June 1974. Yes,
901 sir.

Q And that's true, isn't it?

A Yes, sir.

Q And the district's orders weren't worth a dime either were they?

A At that time, I would say no. If they didn't return

to work, nothing wasn't worth a dime. It wasn't even worth a penny.

* * *

914 *Samuel C. Calloway*

Q What is that position, sir?

A International Representative.

Q And you are working out of what office?

A The Department of Contract Administration, Washington, D. C.

Q Directing your attention to 1969, Mr. Calloway, were you a member of a local union in the Carbon
915 Fuel Company Coal plant here in Kanawha County?

A Yes, I was.

Q What local union were you a member of?

A 6572.

Q Were you an officer in that union at any time during the year of 1969?

A The first part of 1969 I was the vice president of the local union. On or about July 20, I assumed the position of president.

Q That local is in what has been referred to in the evidence as the Carbon Division of Carbon Fuel Coal Company's operation, is that correct?

A That is correct.

Q I believe you indicated you were president for a brief period of time in 1969?

A Yes, I would say two months.

Q Following that, what position did you hold or occupy, if any, with the United Mine Workers of America?

A I was appointed to a job at the District 17 office here in Charleston.

Q And what position were you appointed to?

A Well, to start with, in September '69, I audited some books. Then two months later I assumed the role of Field Representative, as we call it.

916 Q How long did you continue as Field Representative for District 17?

A Through June 30, '74.

Q So for the period of late '69 through 1974, you were a district representative for District 17?

A That is true.

Q What was your assignment as a district representative?

A My assignment was first to keep the men working, and secondly, to get them back to work whenever there was an unauthorized work stoppage.

Q Did your duties include other responsibilities?

A Yes, I would handle grievances on the third step or the intermediate board hearing.

Then, following that, I had briefs to write and I also answered over the telephone contractual questions when the men would call in.

Q Did you perform this range of services during the entire period of your service as a representative for District 17?

A Yes, I did.

Q Having served there during that period, can you state the policy of the district with respect to work stoppages?

A Work stoppages were given priority. Now what I mean by that, just to go a little further, if I had
917 a grievance to handle, usually mine were in the afternoon about three o'clock. If I had a call there was a stoppage, I would take care of the stoppage first. And I had the meetings late because I had to take care of such things.

Q With regard to the district's policy on stoppages, in general terms were work stoppages of that sort favored or disfavored?

A They were disfavored.

Q At the time of your acting as District 17 representative and throughout that period of time, was there a policy or a plan at District 17 in the event of a work stoppage, to take action regarding it?

A Yes.

Q Would you outline what that plan was for the benefit of the Court and the jury?

A Further with the work stoppage I would call the officer of the local union, and ask him the reason or cause. And sometimes his response would be that "I can take care of it myself. I can get the men back." Then possibly, if he couldn't take care of it, he would call me at home that same afternoon, or else if I didn't hear from him, I would call him the next morning, asking him to arrange a meeting, if he could not get them back to work.

918 Once the meeting was arranged, I would attend the local union meeting, and I told the men to

return to work, that they should be working. It was a violation of the contract that they signed to work for Carbon Fuel Company, and there was no reason for them to be out, if they had a grievance they should file it under the contract.

And I further told them that the prolonging of a stoppage could cause lifting or revoking their charter and also that the companies would go to court and get TRO's and they would be forced back to work. And so rather than do that, since they would have to go anyway, they should go on what I told them.

Q From your personal experience, were a number of the work stoppages brought to a conclusion prior to your having a meeting with the local officers and the local members?

A Yes, because there were numerous one-day strikes and if you notice that report that I think Mr. Toney testified from, numerous stoppages started Friday and returned Monday. So according to that report, that looks like that's a three or four day stoppage. But Saturday and Sunday the mines are not scheduled to work.

Q State whether or not many of the work stoppages were brought to a conclusion after your meeting with them at the union hall with the local officers?

919 A Yes. They were brought to a conclusion and the men returned to work after meeting with them.

Q In the event the stoppage was not brought to a conclusion by your first conference, your telephone communication with the local officials, or by your meeting with the miners themselves as a district representative, what steps were then taken?

A I would request another meeting. I was insistent upon the local union president arranging another meeting. And then it has come to me now, while discussing this, if they would not return in another meeting, then President Joe Ellis at this particular time, we would arrange a meeting in the district office. Sometimes that meeting would be during working hours and other times we stayed after working hours to hold meetings.

* * *

925 *Samuel C. Calloway*

CROSS EXAMINATION

Q In local union meetings, Mr. Calloway, that you attended, were votes taken as to whether or not to return to work?

A Now, what do you define as a vote?

Q Well, any indication by sign or otherwise of a division among the house or a division among the members present as to their desire either to go to work or not to go to work?

926 A I would say that in some meetings a show of hands only.

Q And in those meetings in which there was a show of hands, it was clear to you which of the individuals in the local union were indicating a desire that the local union continue to strike?

A No. I still didn't identify the men.

Q You didn't know the name of a single one of them?

A Well, over a five year period, I would say that I just didn't identify them period. Because it's company

responsibility to identify the men who cause work stoppages.

Q And so you didn't know the name of a single person who voted to continue the strike?

A No.

* * *

939 Q Did you ever threaten the local union with disciplinary action under the constitution if it engaged in a work stoppage?

A Well, again, my job was to keep them working if they were working and to get them back if they were out. And it was management—management discharges people under the discharge procedure to discipline them.

THE COURT: Mr. Calloway, now, the question is whether you did it or not. Not whose duty it is, but just did you or did you not threaten to discipline the local, I believe, was the question.

MR. ROLES: That's correct.

A No, we did not make a threat of disciplinary.

Q Now did you threaten to discipline individuals if they picketed or otherwise brought about work stoppages?

A You are talking about—well, no.

Q Once the work stoppage began, did you threaten local unions with disciplinary action if they didn't go back to work?

A No, because they were already being disciplined through the discharge procedure.

Q And did you threaten individuals with discipline if they continued picketing or otherwise bringing about the work stoppage?

940 A There was no threat because that was management's prerogative, to discipline.

* * *

Q You have testified on direct examination that you told officers of the local unions that their charters might be revoked?

A Yes.

Q Did you do that?

A No. That's in the hands of the international union.

Q Did you say that to the local unions?

A Yes.

Q Did you say it to Local Union 2236?

A I'd say over a period of five years, yes.

Q How many times?

A I don't know exactly.

Q Well, tell me approximately.

A I would say two or three times, at least.

Q Was their charter ever revoked?

A Not to my knowledge, no.

Q Did you ever recommend such to the international union?

* * *

941 A No. It wasn't my job to do that. That was an officer's job. I was just a representative.

* * *

943 *Raymond Thompson*

Q Directing your attention to the period 1969 through 1973, Mr. Thompson, did you have a position with the United Mine Workers of America?

A Yes, sir.

Q During the period of '69 what was your position?

A I was a field representative.

944 Q Assigned to what area?

A To—in the Kanawha and Boone fields.

Q Did you in 1969 have as one of your assignments as district representative locals of the Carbon Fuel Company?

A I had two—6572 and 7626 Carbon.

* * *

946 Q Tell the jury the policy and the practice of district representatives, such as yourself, in dealing with work stoppages that occurred in mines or locals that you serviced.

A Well, it has always been the policy of the district—I could go back to the year 1940 where I went to work in the mines, that first priority was work stoppages in this organization. The field representative had the responsibility, first was a work stoppage. He also handled all grievances in his area. If he had a work stoppage in his area and under the jurisdiction of one of his local unions, then the first thing he would do would be get hold of the president of the local union and officers, if necessary, arrange a meeting immediately—

Q By what means was this communication accomplished?

A This was usually by telephone, if we could reach him. And set the time and the place of the meeting, and have any interested parties and have all members there, if they could get it.

947 Q Did you attend those meetings?

A Absolutely. I attended every one.

Q In connection with all work stoppages involving the mines of Carbon Fuel Company, Carbon Division, during the period you served as district representative, did you do that?

A Yes, sir.

Q Were there work stoppages that were brought to an end prior to the time of such a meeting?

A There sure were.

Q How was that accomplished, if it was accomplished?

A Well, you would contact the officers of the local union, most generally the president, he was your main contact, and if it was a minor thing such as equalizing of work or something that he thought he could handle, we would advise him to get hold of the company and see if they couldn't iron it out and settle it and get the men back immediately without further consultation around the mines, which they did. In fact I know of several times that the officers of Decota's locals, the Carbon Division, has contacted me and I have advised them to try to get hold of Mr. Kessler, who is division superintendent of the Carbon Division, and see if they couldn't get it settled, and they would.

They have went back on the next shift, by them going to the office and hunting up Mr. Kessler and working it out, which we would never need the meeting to be arranged.

948 Q Did that happen in connection with work stoppages which are contained in the lawsuit presently here on trial?

A I think they are. I think there is some mentioned in it.

Q In the event they could not get it stopped in that fashion, what was done, if anything?

A On the next day if they couldn't get it done, they was to arrange a meeting immediately and call me so I could attend.

Q Did you or did you not attend those meetings?

A I did. And sometimes it would be difficult because I would have meetings scheduled at other local unions where I had grievances to handle and I would have to go in and make arrangements for other representatives to go into my field and handle grievances so I could attend these meetings.

Q Now, tell the jury what happened when you went out to this meeting during the course of a stoppage.

A Well, you would go into the meeting, which it is something that only people that attended these meetings would know what you were into because these meetings sometimes can get hostile. So you would have to go in them and you would have to eliminate all other discussions other than what this work stoppage was confined to. You would have to confine it to this discussion. And you would discuss it with the people and you
949 would order the men back to work and if they had a grievance to file a grievance because they were entitled to a hearing. Everyone is entitled to be heard.

Q And did you do that?

A Yes, I did.

Q In each instance?

A In each instance. Unless it was settled and they went back to work without a meeting.

Q All right. Now, did this meeting that you are speaking of, this first meeting which you attended, with officers of the local and members of the local, in which you ordered them back to work, result in the bringing to an end of work stoppages?

A Sometimes it would and other times it wouldn't. So what you would have to do, if it didn't, you would foresee or have the president call a meeting for you the next day hoping to resolve it then or as quick as possible.

Q Did that happen on occasion?

A Yes, it did.

Q Were you in attendance at that meeting?

A Yes, sir.

Q In every instance?

A In every instance.

Q What was your purpose in having these meetings?

A To eliminate the work stoppage and get the mines back into operation.

950 Q When you attended subsequent meeting or meetings, what would you say to the miners with respect to returning to work, if anything?

A I would order them to get the mines back into operation and filed—if they had a grievance and what they had, to file a grievance under the terms of the contract, the National Bituminous Coal Wage Agreement.

Q Were there other things that you did, Mr. Thompson, other than the scheduling of these meetings and so forth?

A Yes.

Q To attempt to bring to an end work stoppages?

A Oh, yes.

Q Explain to the jury what those other actions were.

A I have went out in my car and picked up the officers and go to people's house because you always find around an operation there is some people that are more outspoken than others. And these people you would try to get to and talk to get their influence, to help get their influence to get the mines back into operation and you would have to go around and talk sometimes to maybe twenty-five or thirty or forty individuals with the local union officers.

Q Have you carried out that practice in connection with work stoppages which are the subject matter of this lawsuit?

951 A Yes, sir.

Q Was this activity confined to the daytime hours?

A No, sir, I was on call twenty-four hours a day, seven days a week.

Q Were there occasions when these activities occurred in other than the daytime hours?

A Oh, yes, yes.

Q When would they occur?

A I've had them occur more, I think, on the hootowl or the midnight shift and I have been out and talked to

the individual at twelve, one, two, three o'clock in the morning.

Q How long did your efforts, as you have outlined them here today, continue?

A Until the mines returned to work.

Q In every instance?

A In every instance. And farther, I have, on work stoppages where maybe I have went in and talked to Mr. Ellis and Mr. Humphreys, on several occasions, and also to Jack Perry—Mr. Perry is now president of the district—and ask them if they knew of anyone in the local unions that they had any influence in to get hold of them, which Mr. Ellis has told me that he has, but I've never heard him make the call because he would go back to his office.

Q Were meetings ever held with local union
952 officials at the district office in the City of Charleston?

A Many and many a times.

Q In connection with work stoppages?

A Yes, they have.

Q Any of the work stoppages covered by this suit?

A I know of one.

Q Which one was that?

A That was the discharge of the Hodge boy. I don't know his first name because it's been so long.

Q All right.

A I do recognize his—

Q A meeting was held in the district office?

A Yes, sir, it was.

Q Were you a participant in that meeting?

A Yes, I was.

Q What was the purpose of that meeting?

A Well, we wasn't successful by attending the meetings to get the men to return to work and the meeting was to call the local union officers in and the individual who was involved, and to talk to them and tell them the seriousness of these problems, and in fact I think this was in the face of a TRO, after the TRO was issued that this local union—

* * *

965 *Raymond Thompson*

CROSS EXAMINATION

Q I say, so far as you recall, no disciplinary or other action was ever taken against any local union member who openly advocated continuing a strike that you had ordered the local to end?

A No, sir.

Q Isn't that true?

A The only people that's ever been punished by it is where the company has put their fingers on the discharge and relieved them of duty.

Q You have testified that after you attended these meetings and ordered the men to go back to work, that sometimes they went and many times they didn't. And if they didn't return to work, that you continued to urge the local to set additional meetings and you continued to go to those additional meetings and make the same speech, isn't that right?

A Mr. Johnson, I didn't urge. I ordered them.

Q All right. You ordered them to go back and they didn't go so then another meeting was set?

A True.

966 Q And then you went to that meeting and you ordered them back again?

A True.

Q And sometimes they would go and sometimes they wouldn't, isn't that true?

A This is true.

Q Isn't it a fact that sometimes strikes would continue through several meetings before they returned to work?

A Yes, I have attended as high as three or four in any one stoppage.

Q And day after day after day you would go out there and give them the same orders and in effect tell them the same thing?

A True.

Q And nothing was ever done to enforce or penalize anybody for disobeying those orders?

A No, sir.

* * *

967 Q You testified that when you went to these meetings and especially if they did not respond to your orders promptly, that you would tell the members at the local meeting what the international could do to them, as I recall the words?

A True.

Q What did you tell them that the international union could do?

A I told them they could pull their charter and they could try the individuals.

Q To your knowledge during the period 1969 through 1973, was any local union ever pulled for engaging in unauthorized strikes?

968 A No, sir.

Q And so far as fines are concerned, do you know of any local union or individual during that period from 1969 through 1973 who was subjected to a fine for promoting, instigating or encouraging an unauthorized strike?

A No, sir.

* * *

970 Q You said you did tell the employees in these unauthorized work stoppages what the International Union could do if they did not return to work. Did you ever tell them anything that the District could do if they did not return to work?

A Well, that would be something that someone else would have to answer. I told them what the International could do about bringing charges against the individuals and pulling their charter and the response I got, "Well, there's the charter, take it with you."

971 Q Now you didn't tell them anything different that the District could do from what the International could do, is that right?

A No, sir.

Raymond Thompson

REDIRECT EXAMINATION

Q Mr. Thompson, do you know why no action was taken to discipline locals or pull their charter?

A Well, it would only aggravate things and you would have probably a nationwide shutdown, if you started that, in the coal industry.

* * *

Q You speak of, in cross-examination by Mr. Johnson, a feeling or a sense of hostility when you on occasions attended these meetings at the locals, is that right, Mr. Thompson?

A This is true.

Q Was that a localized thing? One person being hostile, or on the other hand, was it a generalized
972 thing?

A It was a general thing to the group as a whole. Usually when they was hostile this way, your President of your local and your officers and field representatives was the one that they was really hostile against.

Q That would be everybody?

A Yes.

* * *

1035 *Arnold Ray Miller*

A I am President of the United Mine Workers International Labor Union.

* * *

1037 Q Mr. Miller, I want to inquire of you as to the policy of the United Mine Workers of America with respect to work stoppages in the coal industry and

in the coal fields. Does the International have a policy with respect to that?

A The policy was and is yet today in the event of a work stoppage that the membership be directed to go back to work at the site where the problem occurs and a meeting is to be called and the district representatives to go to the meetings and hopefully find out what the problem is and try to arrange a meeting with management when management will agree to meet.

Q And what is the overall purpose and object of those meetings?

A Well, first you have to find out what the problem is so you can resolve the problem between the two parties.

Q And is there an object or purpose in this solution of that. What is your purpose in doing these things, if any?

A Well, everyone suffers in the event of a work stoppage, not only the industry but our membership and the general public and it is our desire to bring these
1038 problems under control and prevent them if it's possible.

* * *

Q During the period of your presidency, Mr. Miller, which is also covered in part by the period encompassed in this lawsuit — in other words, this lawsuit continues through I think the date of October of 1973 and you say you assumed the presidency in December of 1972?

A Yes, sir.

Q Now, during the period covered by this law-
1039 suit, what was — what did the International do or order by way of policy and directive to bring work stoppages to a conclusion?

A Well, when one occurs we order the membership back to work and we order that meetings be held and district representatives dispatched to the meetings to try to find out what the problem is and hopefully arrange a meeting with management so that the problem can be resolved.

* * *

1048 Q And were you aware of the authority to discipline members and locals for unauthorized work stoppages or for prolonging unauthorized work stoppages?

A Yes.

Q Are you personally acquainted, based upon your experience as a miner, with any efforts by the International to put into practice disciplinary procedures?

A I remember one instance of my own local.

Q What local was yours?

A 750.

Q And where was that, what company?

A This was at that time with Truax-Trayer Coal Company.

Q All right. Approximately when was this incident?

A This was in the mid '50's. I can't recall the exact year.

Q All right. What happened in connection with that incident or let me ask you first, was disciplinary action threatened or taken?

A Disciplinary action was threatened. We had a work stoppage and I can't remember who the District official

was who came to the local and threatened to rip down the charter and he was advised by the member-
1049 ship to go ahead and take it.

Q Did his threat to remove the charter — what effect did that have on the membership?

A I think it expanded and inflamed the membership and that particular strike lasted three weeks.

* * *

1051 Q Why, Mr. Miller, has the International under your direction and leadership not taken disciplinary action against individual members of the union or against individual locals of the union, especially during the period 1969 through 1973?

A Well, when there is a work stoppage, it is my judgment that the first priority is to resolve the work stoppage and get the mines back to work. It is also my opinion that in those cases that occur under my administration that if I took disciplinary action it would be inflammatory and would enlarge the work stoppage itself and my responsibility is to the industry and our membership and the general public.

1054 *Arnold Ray Miller*

CROSS EXAMINATION

Q Mr. Miller, when you took office as President of the International Union in December 1972 there was already in existence at that time a serious problem with unauthorized strikes in the union in the industry, was there not?

A Yes.

Q And of course the National Bituminous Coal Wage Agreement in effect at that time provided that all dis-

putes and local troubles would be settled through the grievance and arbitration procedures under the contract?

A Yes.

Q And it obligated the parties to maintain the integrity of the contract and to see that they were settled in that way, didn't it?

A Yes, both parties.

Q And the constitution of the United Mine Workers of America in effect at that time prohibited locals and their members from engaging in strikes that were not authorized by the International Union, did it not?

A Yes, sir.

Q But nevertheless, unauthorized strikes were
1055 occurring and occurring in large numbers, were they not?

A They were.

Q And isn't it true that that problem and the occurrence of unauthorized strikes had existed for a good many years prior to the time that you became the International President?

A Yes, sir.

Q As a matter of fact, the exhibits which you just looked at there, 91, 92 and 94 indicate that that problem went back to 1951 or perhaps that long ago, do they not?

A Yes.

Q I take it from what you have testified on direct examination that at the time you became the President of the International Union, the International did recognize and was recognizing that it had an obligation to stop and to try to prevent unauthorized strikes, is that true?

A Yes, we have been trying to do that.

Q You recognize that the International had that obligation both under the contract and under the Constitution of the International Union?

A I recognize that both parties have an obligation.

Q I take it from what you testified that at the time you became President of the International Union, that the policy and practice of the International was to have the districts within which unauthorized strikes occurred send district representatives to the mines where
1056 the strikes were occurring to try and persuade or direct the men back to work, is that right?

A The policy was to direct that the local union officials and its members hold a meeting with the district representative to attend that meeting and direct the men back to work and try to arrange a meeting with management if they would meet.

Q It was not a custom or a practice generally for the International Union to contact the local unions or their members directly in unauthorized work stoppages, was it?

A Well, the district is through the International. It has always been and that is the policy and that was the way it was transmitted down.

Q Were the actions that you have described of the locals in calling meetings and directing the members to return to work were those done at the direction of the International Union?

A Well, the general policy was that the local union officers had the responsibility to do it and so did the district and the international.

Q And did this method of attempting to deal with work stoppages continue as you have described it throughout the period from the time that you became President of the International in 1972 through the end of 1973?

A Yes. It has continued and improved once
1057 we got a commitment; I believe in 1973 we had to go to Court to get one operator to agree to meet when there was a problem.

Q But the practice and procedure that you have described of the districts arranging to have local union meetings and then sending the district representatives out to the meetings to direct the men to return to work, that same procedure continued throughout the time from the time you became President down to the end of 1973?

A Yes.

Q And it is your understanding that it had been the practice for years prior to the time you became President?

A Yes, sir.

Q Did you receive reports back from the district with respect to a success or lack of success that they had had at these local union meetings during unauthorized work stoppages?

A We get reports back.

Q Then you knew that there were numerous instances where the members of the local and the local paid no attention to the district's orders and continued on unauthorized work stoppages despite the orders of the district to the contrary, didn't you?

A Yes.

Q Were you also aware that it was the practice and in most instances was the case that the local union officers themselves did not return to work when
1058 the men didn't return to work after being ordered to do so by the district representative?

A The local union officers would not cross a picket line, if that would be the case.

* * *

Q Now, weren't there many instances then in which there were no pickets involved from other locals and still the officers and the men alike continued in the work stoppage after they had been told by the district representatives to return to work one or more times?

A I won't agree that there are many. There are instances where that occurred.

Q And these were reported to you?

A Yes.

1059 Q Were you aware as evidence in this case shows that sometimes local union meetings were held day after day after day repeatedly during an unauthorized work stoppage and the men continued to decline to return to work?

A There has been many meetings on several instances in an effort to get the mine back into operation.

Q And isn't it also a fact that you were aware that there were instances where when the men finally did return to work they engaged in another similar unauthorized work stoppage within a few days or weeks or months thereafter?

A I don't know of many cases of that. There have been a few isolated cases I know about.

Q Don't you know that some of these local unions, for example, in District 17 including locals at Carbon Fuel, have been repeatedly engaged in unauthorized work stoppages, sometimes a half dozen times in a single year or more?

A I know of some of the problems with this particular company because I live in the area. I know very well the problems we have with that particular operator.

THE COURT: I don't believe that answer was responsive. The question is do you know of instances where in a year's time a single local would walk out as much as a half dozen times.

A Yes.

1060 BY MR. JOHNSON:

Q So getting back to work once even when you were able to do it, was no solution to the problem, was it, Mr. Miller?

A No, I don't always have all these solutions.

Q And in that May 17, 1956 UMWA policy declaration, which is Plaintiff's Exhibit No. 94 (indicating) the International Executive Board, I think, as you will see, made the statement with respect to the unauthorized work stoppages that were occurring at that time that "These local unions and the membership thereof are defiant of the union and imperil the welfare of all other members."

Would you say that that is a fair characterization of the situation where the locals and their members refused to obey the orders of the district and have refused repeatedly to return to work?

A That is a fair characterization of what really happened without knowing the facts.

Q Has the International Union or District 17 to your knowledge done anything to enforce or back up its statements or directions at these local union meetings with respect to returning to work during unlawful work stoppages or ceasing to engage in such unlawful work stoppages?

A I believe we have done everything that was possible to be done without further aggravating the
1061 situation and causing it to expand. That's my judgment.

Q But you haven't done anything, have you, other than to send out over and over again the district representatives to tell them to return to work?

A I have come down myself and personally got involved and got some of the problems resolved, to find out what the real problem was.

Q Have you appeared at any of these local union meetings involving Carbon Fuel Company during the period 1969 through 1973?

A Not through 1973, but I have appeared at the local unions of that company.

Q Is it not obvious to you, Mr. Miller, that the means that have heretofore been taken by the International with respect to these work stoppages which you have described and which consist as I understand it of holding local union meetings and sending district representatives to urge the men to return to work, have been largely futile and unsuccessful in dealing with the strike problem?

A As I said earlier, it is not a one way street. It isn't something that I can resolve and find answers to all

the problems without some response from the industry itself.

Q But the methods that have been used by the union, by the International Union and by the district to
1062 this time have not been successful, have they?

A Not totally, no, sir.

Q But there has been no instance when any disciplinary action against locals or members was taken during the period 1969 through 1973, was there?

A I don't know of any instance that disciplinary action would have resolved the problem, and it is my opinion it would have further inflamed the problem and would have blown it all out of proportion.

Q I understood you testified that, but the answer is "No, nothing has been done of the disciplinary nature", isn't that true?

A Well, I wouldn't go so far as to say nothing has been done. I have not, in my judgment, taken what could be considered drastic steps, because I just don't think it would be successful.

Q Has anybody been—any member or any local been fined by the International for engaging in unauthorized work stoppages, no matter how numerous?

A No, sir. Not to my knowledge. There might have been years past. There was an attempt, but not at the locals where I worked, and it was not successful then.

Q To your knowledge, during the period from 1969 through 1973, no action of that kind was taken by the International Union, was it?

1063 A I couldn't say that no action was taken by the International then because at that particular

time I had no intimate knowledge of the workings of the International Union.

Q To the best of your knowledge?

A It did not occur in the local I was in, just one local union.

Q And no charter of any local to your knowledge during that period of time was lifted or any provisional government established by the union as the constitution provided at that time, was there?

A There was an attempt to lift the charter in my own local union but it was not done.

Q Well, there was a threat to do it, is that what you're saying?

A Yes, that there was a threat to do it.

Q You mentioned when Mr. McIntyre, I believe, asked you if any disciplinary action had been taken since you were President of the International, that you referred to an incident in March of 1973 that involved disciplinary action against Joe Ellis?

A Yes, sir.

Q Now, that action did not—with respect to Mr. Ellis—was not because of any work stoppage that Mr. Ellis had called or participated in, was it?

1064 A No. But it was still disciplinary action.

Q But it related to something else internal to the union, not to the work stoppage problem.

A Well, he defied an order.

Q But the order wasn't to tell somebody to go back to work or try to end a strike or anything like that, was it?

A No, sir.

* * *

Q Specifically, Mr. Miller, the United Mine Workers Constitution in effect in those years, 1969 through 1973, which is Plaintiff's Exhibit No. 34, which I will show you so you can follow it, provided in Article 20, Section 9 — that's Article XX, Section 9 — that any member or members engaged in an unauthorized work stoppage resulting in shutting down a mine shall after due
1065 notice and hearing upon conviction suffer such penalty as may be imposed upon them by the respective district organizations.

That, during the period 1969 through 1973, at least, was never utilized or resorted to by the International or by District 17.

* * *

A From 1969 to December 22, 1972 I had no intimate knowledge of the inner workings of the International Union except through the local I was in and the neighboring locals. I heard talk that there was efforts made to invoke this section here. I don't know of those instances, but I also don't know that anytime that it was invoked and worked. I've already said there was a threat to lift the charter in my own local union and the membership told the district rep. — I can't recall exactly who it was — that he could take it down and take it with him.

And it's my opinion because I was a member of that local that that further aggravated the problem there and did not resolve it.

1066 Q But the answer is no, that so far as you know from your own personal knowledge it was never done?

A As far as I know, no.

Q And certainly during the time that you were the President down to the end of 1973, you know that it was never done, don't you?

A That's right, because I didn't think it would work.

Q But you didn't try it, didn't you?

A Well, certainly I wasn't going to try it if my judgment led me to believe it was going to further aggravate the situation. I don't think that would be responsible action on my part.

Q Under the United Mine Workers of America Constitution that was in effect during the period in question — that is from the time you became President of the International Union down to the end of 1973, Article III, Section 1 provided that the International Union shall have supreme legislation, executive and judicial authority over all members and subordinate branches, isn't that right?

A Yes, sir.

Q Did the number or frequency of strikes in a particular local union have anything whatsoever
1067 to do with a particular action that the International or the Districts took with respect to strikes in that local?

A I think the seriousness of the problem and the breach was probably of more importance than anything else to me at that time. That's what I've tried to do since I became President of this union is find out what the cause was and eliminate the cause regardless of who was responsible.

Q But no matter how frequent these strikes, isn't it true that all that was ever done with respect to that local was to send out a district representative to attend a local union meeting and tell them to go back to work over and over and over again?

A I never made an assessment that any other action on my part was appropriate or would resolve the problem.

Q Do you agree that in many instances only a majority of the members and sometimes a small minority of the members in a local really wanted to strike in these unauthorized strikes?

A There is always a minority of the membership of any organization, and particularly the locals, that are more vocal than others. I could not make an assessment that there is a small minority that would prevail in all cases.

Q Do you know that it is a fact that in many instances only a few members of a local have succeeded in bringing the whole local union out on strike?

1068 A Yes.

BY MR. JOHNSON:

Q I believe you've answered that question?

A Yes.

Q You said yes?

A Yes.

Q Now, in those situations, what efforts, if any, and what action, if any, has been taken by the International or the District Union to identify and learn the identity of those individuals who caused the strike?

* * *

1069 A Well, we have not been able to determine who they are. We haven't made any effort to get their names because I firmly believe it would be impossible to get the names or you're going to be asking the membership to violate their oath of obligation and in a sense inform on their own fellowman and the tradition in the Mine Workers certainly has been of longstanding that is something that an exercise in futility to expect someone to do it because they won't do it.

Q You are saying to your knowledge no action has been taken to identify, is that right?

A Yes.

Q Are you saying that if the International and the District Union went to the local union officers and said, "Who are the individuals in the local who advocated this strike, or who instigated this strike?" that because of the sense of brotherhood in the union, that the officers of the local wouldn't tell the District and the International?

* * *

1070 A What you are saying, if that was to happen, would in my judgment precipitate perhaps violence, if I were to ask the local officers to do that and they would do it. And it has not been my judgment so far that that would really resolve the problem.

I think my highest responsibility is to fulfill our commitment and try to get these problems over.

Q Have you ever, to your knowledge, or has the International or the District, ever asked the local union officers or anybody in the local who the instigators of a particular work stoppage were?

A I have inadvertently asked myself before I realized what I was doing and the answer was, no, they would not tell.

Q Now with respect to picketing situations, it is also true that very few individuals from a local union can bring about and prolong a work stoppage by picketing at shift change times and shut down the mine. Isn't that true?

A Yes.

Q And in this fashion, there have been strikes that involved a great many locals that began at one particular local and were spread to the other locals by picketing activity. Isn't that true?

A That's true when there is sufficient awareness of what the problem is.

1071 Q Now, what action, if any, has the International Union taken to learn the identity of the pickets and who the individuals are who are involved in that picketing and particularly during the period 1969 through 1973?

A I don't know of any effort that has been made to determine who the individuals are by name. I have already stated that it would be an exercise in futility because no one would tell you.

Q So far as you know, no effort has ever been made to find out who they are?

A We've made efforts to find out who they are but to no avail.

Q Have you ever learned the names? Has the International learned the names of any persons who were engaged in picketing?

A Not to this point, we haven't.

* * *

1072 *Arnold Ray Miller*

REDIRECT EXAMINATION

BY MR. McINTYRE:

Q Mr. Miller, in response to Mr. Johnson's last inquiry of you. you say you have not issued any order directing your members to cross picket lines. Why have you not done so?

A Because it is my firm opinion based on lifetime of mining that this would precipitate violence.

Q What, if anything, would it do with regard to work stoppages?

A I don't think it would resolve the problem. I think it would further aggravate and inflame the situation and I think it would be all out of proportion.

Q You testified in response to one of Mr. Johnson's questions that — having to do with your obligations under the contract — that you as President of the International recognized that both parties had obligations. What did you mean by that answer, Mr. Miller?

A I mean the operators' representatives are the bargaining agents and we bargain on behalf of our membership, and when agreement is reached we both have a commitment to see that the contractual commitments are carried out and honored.

* * *

1076 *Arnold Ray Miller*

EXAMINATION BY THE COURT

THE COURT: I have just one question.

Mr. Miller. during the time you were President and up through 1963 —

MR. McINTYRE: Did you mean '73?

THE COURT: '73. Pardon me. Through '73. Every walkout involving Carbon Fuel of which you became aware, in your opinion, did the International Union make an earnest effort to get the matters or differences settled?

THE WITNESS: Yes, I think the International made as much effort as we could. You have to understand —

THE COURT: Now, when I say earnest effort, I really have in mind the language in the contract. You know what I'm talking about?

THE WITNESS: Yes, sir.

THE COURT: Do you think, having that in
1077 mind, the International made an earnest effort in every case of which you became aware to get the matter settled?

THE WITNESS: I think everything was done, Your Honor, that was possible to be done without further aggravating the situation and that's a judgment we have to make. I wish that I could give you more favorable response but some of the people we have to deal with, we've not reached that position yet. Now I'm hopeful that we will move some more progressively. We are making some progress. I never thought it was going to be easy to start with, Your Honor, and it hasn't been.

* * *

Portions of Plaintiffs Exhibits No. 17-32—
The Collective Bargaining Agreements

Exhibit No. 19

APPALACHIAN JOINT WAGE AGREEMENT

Effective April 1, 1941, to March 31, 1943

APPALACHIAN AGREEMENT

THIS AGREEMENT, made the 19th day of June, 1941, between the Central Pennsylvania Coal Producers' Association, Georges Creek and Upper Potomac Coal Association, Somerset County Coal Operators' Association, Western Pennsylvania Coal Operators' Association, Ohio Coal Association, Michigan Coal Operators' Association, Northern Panhandle of West Virginia Coal Operators' Association, Northern West Virginia Coal Association, Operators' Association of Williamson Field, Big Sandy-Elkhorn Coal Operators' Association, Hazard Coal Operators' Association, Kanawha Coal Operators' Association, Logan Coal Operators' Association, Southern Appalachian Coal Operators' Association, New River Coal Operators' Association, Pocahontas Operators' Association, Winding Gulf Operators' Association, Greenbrier Coal Operators' Association, Upper Buchanan Smokeless Coal Operators' Association, Harlan County Coal Operators' Association, and Virginia Coal Operators' Association, voluntary associations on behalf of each member thereof, hereinafter referred to as the Operators, party of the first part, and the International Union, United Mine Workers of America, and Districts 2, 3, 4, 5, 6, 16, 17, 19, 24, 28, 30 and 31, hereinafter referred to as the Mine Workers and on behalf of each member thereof, party of the second part. (New Districts of the United Mine Workers of America may be established in this territory.)

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MAXIMUM HOURS AND WORKING TIME

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HOLIDAYS

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BASIC TONNAGE RATES

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CHECKWEIGHMAN

* * *

BOYS

* * *

EXEMPTIONS UNDER THIS CONTRACT

* * *

MANAGEMENT OF MINES

* * *

MINE COMMITTEE

* * *

SETTLEMENT OF DISPUTES

* * *

DISCHARGE CASES

* * *

ILLEGAL SUSPENSION OF WORK

A strike or stoppage of work on the part of the Mine Workers shall be a violation of this Agreement. Under no circumstances shall the Operator discuss the matter under dispute with the Mine Committee or any representative of the United Mine Workers of America during suspension of work in violation of this Agreement.

IRREGULAR WORK

* * *

PREPARATION OF COAL AND MINING PRACTICE

* * *

VACATIONS WITH PAY

* * *

SAFETY PRACTICES

* * *

ENGINEER AND PUMPERS' DUTIES

* * *

SHIFTS

* * *

SENIORITY

* * *

PAY DAY

* * *

COKE AND CLEANING PLANTS

* * *

MEDICAL AND HOSPITALIZATION SERVICES

* * *

PHYSICAL EXAMINATION

* * *

HOUSE RENTS

* * *

MISCELLANEOUS PROVISIONS

* * *

DISTRICT CONFERENCES

* * *

PROTECTIVE WAGE CLAUSE

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APPALACHIAN JOINT CONFERENCE

* * *

Exhibit No. 20

SOUTHERN WAGE AGREEMENT

Effective April 1, 1941, to March 31, 1943

SOUTHERN WAGE AGREEMENT

THIS AGREEMENT, made the 5th day of July, 1941, between the Operators' Association of Williamson Field, Big Sandy-Elkhorn Coal Operators' Association, Hazard Coal Operators' Association, Harlan County Coal Operators' Association, Kanawha Coal Operators' Association, Logan Coal Operators' Association, Southern Appalachian Coal Operators' Association, New River Coal Operators' Association, Pocahontas Operators' Association, Winding Gulf Operators' Association, Greenbrier Coal Operators' Association, Upper Buchanan Smokeless Coal Operators' Association, and Virginia Coal Operators' Association, voluntary associations on behalf of each member thereof hereinafter referred to as the Operators, party of the first part, and the International Union, United Mine Workers of America, and Districts 17, 19, 28 and 30, hereinafter referred to as the Mine Workers and on behalf of each member thereof, party of the second part. (New districts of the United Mine Workers may be established in this territory.)

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties as heretofore defined and set forth in this Agreement. It is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the employes of the parties of the first part. It is agreed that as a condition of employment all employes shall be members of the United Mine Workers of America, except in those exempted classifications of employment as provided in this contract. (See

Note.) It is the intent and purpose of the parties hereto that this Agreement will promote an improved industrial and economic relationship in the bituminous coal industry, and to set forth herein the basic agreements covering rates of pay, hours of work, and conditions of employment to be observed between the parties in the following territory: Southern West Virginia, Virginia, Northern Tennessee, and that part of Kentucky lying east of a line drawn north and south through the City of Louisville.

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MAXIMUM HOURS AND WORKING TIME

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HOLIDAYS

* * *

BASIC TONNAGE RATES

* * *

CHECKWEIGHMAN

* * *

BOYS

* * *

EXEMPTIONS UNDER THIS CONTRACT

* * *

MANAGEMENT OF MINES

* * *

MINE COMMITTEE

A committee of three (3) Mine Workers, who shall be able to speak and understand the English language, shall be elected at each mine by the Mine Workers employed at such mine. Each member of the Mine Committee shall be an employe of the mine at which he is a committee member, and shall be eligible to serve as a committee member only so long as he continues to be an employe

of said mine. The duties of the Mine Committee shall be confined to the adjustment of disputes arising out of this Agreement and the mine management and the Mine Worker, or Mine Workers, have failed to adjust. The Mine Committee shall have no other authority or exercise any other control, nor in any way interfere with the operation of the mine; for violation of this clause any or all members of the Committee may be removed from the Committee.

SETTLEMENT OF DISPUTES

Should differences arise between the Mine Workers and the Operator as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at any mine, there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle such differences immediately:

First: Between the aggrieved party and the mine management;

Second: Through the management of the mine and the Mine Committee;

Third: By a Board consisting of four members, two of whom shall be designated by the Mine Workers and two by the Operators.

Should the Board fail to agree, the matter shall be referred to an umpire selected by said Board. Should the Board be unable to agree on the selection of an umpire, he shall be designated by the International President of the United Mine Workers of America and the President of the Operators' Association affected. The decision of the umpire in any event shall be final.

District conferences may establish an intermediate board consisting of two (2) commissioners, one representing the Operators and one representing the Mine Workers with such powers as said Conference may delegate.

Pending the hearing of disputes, the Mine Workers shall not cease work because of any dispute; and a decision reached at any stage of the proceeding shall be binding on both parties hereto, and shall not be subject to reopening by any other party or branch of either association except by mutual agreement.

Expense and salary incident to the services of an umpire shall be paid jointly by the Operators and Mine Workers in each District.

DISCHARGE CASES

When a Mine Worker has been discharged from his employment and he believes he has been unjustly dealt with, it shall be a case arising under the method of settling disputes herein provided. In all discharge cases should it be decided under the rules of this Agreement that an injustice has been dealt the Mine Worker, the Operator shall reinstate and compensate him at the rate based on the earning of said Mine Worker prior to such discharge. Provided, however, that such case shall be taken up and disposed of within five days from the date of discharge.

ILLEGAL SUSPENSION OF WORK

A strike or stoppage of work on the part of the Mine Workers shall be a violation of this Agreement. Under no circumstances shall the Operator discuss the matter under dispute with the Mine Committee or any representative of the United Mine Workers of America during suspension of work in violation of this Agreement.

IRREGULAR WORK

* * *

PREPARATION OF COAL AND MINING PRACTICE

* * *

VACATIONS WITH PAY

* * *

SAFETY PRACTICES

* * *

ENGINEER AND PUMPERS' DUTIES

* * *

SHIFTS

* * *

SENIORITY

* * *

PAY DAY

* * *

COKE AND CLEANING PLANTS

* * *

MEDICAL AND HOSPITALIZATION SERVICES

* * *

PHYSICAL EXAMINATION

* * *

HOUSE RENTS

* * *

MISCELLANEOUS PROVISIONS

* * *

DISTRICT CONFERENCES

* * *

PROTECTIVE WAGE CLAUSE

* * *

JOINT SOUTHERN WAGE CONFERENCE

* * *

Exhibit No. 21

NATIONAL BITUMINOUS COAL WAGE AGREEMENT

Effective May 29, 1946, During the Period of Government Operation of Mines

AGREEMENT

THIS AGREEMENT between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945.

1. Provisions of National Bituminous Coal Wage Agreement Preserved

Except as amended and supplemented herein, this Agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941, through March 31, 1943, the supplemental agreement providing for the six (6) day work week, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945.

2. Mine Safety Program

* * *

3. Workmen's Compensation and Occupational Disease

* * *

4. Health and Welfare Program

* * *

5. Survey of Medical and Sanitary Facilities

* * *

6. Wages

* * *

7. Vacation Payment

* * *

8. Settlement of Disputes

Upon petition filed by the United Mine Workers with the Coal Mines Administrator showing that the procedure for the adjustment of grievances in any coal producing district is inequitable in relation to the generally prevailing standard of such procedures in the industry, the Coal Mines Administrator will direct the operating managers at mines in the district shown to have an inequitable grievance procedure to put into effect within a reasonable period of time the generally prevailing grievance procedure in the industry.

9. Discharge Cases

The Coal Mines Administrator will carry out the provision in agreements which were in effect on March 31, 1946, between coal mine operators and the United Mine Workers that cases involving the discharge of employees for cause shall be disposed of within 5 days.

10. Fines and Penalties

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11. Supervisors

* * *

12. Safety

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13. Retroactive Wage Provisions

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14. Effective Date

* * *

Exhibit No. 22

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1947

Effective July 1, 1947, to June 30, 1948

THIS AGREEMENT, made this 7th day of July, 1947, by and between the coal operators and associations signatory hereto hereinafter referred to as Operators, parties of the first part, and the International Union, United Mine Workers of America, hereinafter referred to as Mine Workers, on behalf of each member thereof, party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements previous agreements as herein provided. This Agreement (subject to the amendments, modifications and supplements as hereinafter provided) carries forward and preserves the terms and conditions of the Appalachian Joint Wage Agreement (dated June 19, 1941), effective April 1, 1941, to March 31, 1943, the Supplemental Six-Day Work Week Agreement, the National Bituminous Coal Wage Agreement (dated April 11, 1945), effective April 1, 1945, and all the various District Agreements executed between the United Mine Workers of America and the various Operators and Coal Associations (based upon the aforesaid basic agreements) as they existed on March 31, 1946, subject to the terms and conditions of this Agreement and as amended, modified and supplemented by this Agreement as herein set out.

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set forth in this Agreement. It

is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the employees of the parties of the first part. It is further agreed that as a condition of employment all employees shall be or become, members of the United Mine Workers of America, except in those exempted classifications of employment as hereinafter provided in this Agreement. This provision does not change the rules or practices of the industry pertaining to management. The Mine Workers intend no intrusion upon the rights of management as heretofore practiced and understood. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationship in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement during such time as such persons are able and willing to work.

EXEMPTIONS UNDER THIS AGREEMENT

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MINE SAFETY PROGRAM

* * *

WORKMEN'S COMPENSATION AND OCCUPATIONAL DISEASES

* * *

United Mine Workers of America

WELFARE AND RETIREMENT FUND

* * *

WAGES AND HOURS

* * *

VACATION PAYMENT

* * *

CHECKOFF

* * *

DISTRICT AGREEMENTS

New Districts of the United Mine Workers of America may be established.

This Agreement supersedes all existing and previous contracts except as incorporated and carried forward herein by reference; and all local agreements, rules, regulations and customs heretofore established in conflict with this Agreement are hereby abolished. Prior practic and custom not in conflict with this Agreement may be continued, but any provisions in District or Local Agreements providing for the levying, assessing or collecting of fines or providing for "no strike," "indemnity" or "guarantee" clauses or provisions are hereby expressly repealed and shall not be applicable during the term of this Agreement. Wherever a conflict arises between this Agreement and any District or Local Agreement, this Agreement shall prevail. When day men are transferred to loading coal the individual affected, if aggrieved, shall have the right of review under the settlement of disputes procedures provided in this Agreement.

No District Contract or Agreement negotiated hereunder shall become effective until approval of such Contract or Agreement by the International Union, United Mine Workers of America, has been first obtained.

SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

Should differences arise between the Mine Workers and the Operators as to the meaning and application of

the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall ge made to settle such differences immediately:

1. Between the aggrieved party and the mine management.

2. Through the management of the mine and the Mine Committee.

3. Through District representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the Operators.

5. Should the board fail to agree the matter shall, within thirty (30) days after decision by the board, be referred to an umpire to be mutually agreed upon by the Operator or Operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the Operator or Operators affected and by the Mine Workers.

A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement.

HOUSE COAL

* * *

MISCELLANEOUS

1. Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing any "no strike" or "Penalty" clause or clauses or any clause denominated "Illegal Suspension of Work" are hereby rescinded, cancelled, abrogated and made null and void.

2. Any and all provisions of any contracts or agreements between the parties hereto or some of them, whether National, District, Local or otherwise, providing for a protective wage clause and a modification of this Agreement or said agreements if a more favorable wage agreement is entered into by the United Mine Workers of America, are hereby rescinded, cancelled, abrogated and made null and void.

3. The contracting parties agree that, as a part of the consideration of this contract, any and all disputes, stoppages, suspensions of work and any and all claims, demands or actions growing therefrom or involved therein shall be by the contracting parties settled and determined exclusively by the machinery provided in the "Settlement of Local and District Disputes" section of this Agreement; or, if national in character, by the full use of free collective bargaining as heretofore known and practiced in the industry.

TERMINATION OF AGREEMENT

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NATIONAL CONFERENCES

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INTEGRATED INSTRUMENT

* * *

Exhibit No. 23

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1948

Effective July 1, 1948, to June 30, 1949
Executed at Washington, D. C., June 25, 1948

THIS AGREEMENT, made this 25th day of June, 1948, by and between the coal operators and associations signatory hereto hereinafter referred to as Operators, parties of the first part, and the International Union, United Mine Workers of America, hereinafter referred to as Mine Workers, on behalf of each member thereof, party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements previous agreements as herein provided. This Agreement (subject to the amendments, modifications and supplements as hereinafter provided) carries forward and preserves the terms and conditions of the Appalachian Joint Wage Agreement (dated June 19, 1941), effective April 1, 1941, to March 31, 1943, the Supplemental Six-Day Work Week Agreement, the National Bituminous Coal Wage Agreement (dated April 11, 1945), effective April 1, 1945, the National Bituminous Coal Wage Agreement of 1947 (dated July 8, 1947), effective July 1, 1947, and all the various District Agreements executed between the United Mine Workers of America and the various Operators and Coal Associations (based upon the aforesaid basic agreements) as they existed on June 30, 1948, subject to the terms and conditions of this Agreement and as amended, modified and supplemented by this Agreement as herein set out.

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND

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WAGES AND HOURS

* * *

VACATION PAYMENT

* * *

TERMINATION OF AGREEMENT

* * *

INTEGRATED INSTRUMENT

* * *

Exhibit No. 24

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950

Effective March 5, 1950, to June 30, 1952
Executed at Washington, D. C., March 5, 1950

THIS AGREEMENT, made this 5th day of March, 1950, by and between the coal operators and associations signatory hereto hereinafter referred to as Operators, parties of the first part, and the International Union, United Mine Workers of America, hereinafter referred to as Mine Workers, on behalf of each member thereof, party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements previous agreements as herein provided. This Agreement (subject to the amendments, modifications and supplements as hereinafter provided) carries forward and preserves the terms and conditions of the Appalachian Joint Wage Agreement (dated June 19, 1941) effective April 1, 1941, to March 31, 1943, the Supplemental Six Day Work Week Agreement, the National Bituminous Coal Wage Agreement (dated April 11, 1945) effective April 1, 1945, and all the various District Agreements executed between the United Mine Workers of America and the various Operators and Coal Associations (based upon the aforesaid basic agreements)

as they existed on March 31, 1946, subject to the terms and conditions of this Agreement and as amended, modified and supplemented by this Agreement as herein set out.

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set forth in this Agreement. It is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the employees of the parties of the first part. It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America, to the extent and in the manner permitted by law, except in those exempted classifications of employment as hereinafter provided in this agreement. This provision does not change the rules or practices of the industry pertaining to management. The Mine Workers intend no intrusion upon the rights of management as heretofore practiced and understood. It is the intent and purpose of the parties hereto that this agreement will promote and improve industrial and economic relationship in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement.

EXEMPTIONS UNDER THIS AGREEMENT

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MINE SAFETY PROGRAM

* * *

WORKMEN'S COMPENSATION AND OCCUPATIONAL DISEASES

* * *

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950

* * *

WAGES AND HOURS

* * *

VACATION PAYMENT

* * *

CHECKOFF

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DISTRICT AGREEMENTS

* * *

This Agreement supersedes all existing and previous contracts except as incorporated and carried forward herein by reference; and all local agreements, rules, regulations and customs heretofore established in conflict with this Agreement are hereby abolished. Prior practice and custom not in conflict with this Agreement may be continued, but any provisions in District or Local Agreements providing for the levying, assessing or collecting of fines or providing for "no strike," "indemnity" or "guarantee" clauses or provisions are hereby expressly repealed and shall not be applicable during the term of this Agreement. Wherever a conflict arises between this Agreement and any District or Local Agreement, this Agreement shall prevail. When day men are transferred to loading coal the individual affected, if aggrieved, shall have the right of review under the settlement of disputes procedures provided in this Agreement.

* * *

SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

Should differences arise between the Mine Workers and the Operators as to the meaning and application of

the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately:

1. Between the aggrieved party and the mine management.

2. Through the management of the mine and the Mine Committee.

3. Through District representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the Operators.

5. Should the board fail to agree the matter shall, within thirty (30) days after decision by the board, be referred to an umpire to be mutually agreed upon by the Operator or Operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the Operator or Operators affected and by the Mine Workers.

A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement.

HOUSE COAL

* * *

MISCELLANEOUS

1. Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing any "no strike" or "Penalty" clause or clauses or any clause denominated "Illegal Suspension of Work" are hereby rescinded, cancelled, abrogated and made null and void.

2. Any and all provisions of any contracts or agreements between the parties hereto or some of them whether National, District, Local or otherwise providing for a protective wage clause and a modification of this Agreement or said agreements if a more favorable wage agreement is entered into by the United Mine Workers of America, are hereby rescinded, cancelled, abrogated and made null and void.

3. The contracting parties agree that, as a part of the consideration of this contract, any and all disputes, stoppages, suspensions of work and any and all claims, demands or actions growing therefrom or involved therein shall be by the contracting parties settled and determined exclusively by the machinery provided in the "Settlement of Local and District Disputes" section of this Agreement; or, if national in character, by the full use of free collective bargaining as heretofore known and practiced in the industry.

4. The United Mine Workers of America and the Operators signatory hereto affirm their intention to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to

prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement.

TERMINATION OF AGREEMENT

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NATIONAL CONFERENCES

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INTEGRATED INSTRUMENT

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Exhibit No. 25

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED JANUARY 18th, 1951

Effective February 1, 1951

WHEREAS on March 5, 1950, and at various dates subsequent thereto certain coal associations and companies (generally referred to as Operators), in their association and company names and capacities, executed with the United Mine Workers of America the National Bituminous Coal Wage Agreement of 1950 (dated March 5, 1950); and subsequent to becoming signatories to said Agreement many of said signatory operators affiliated with and became members of a newly created Association denominated and known as the "Bituminous Coal Operators' Association" and authorized said Association by and through its President, Harry M. Moses, to officially represent said members, companies and associations in the negotiation of wage agreements with the United Mine Workers of America; and,

WHEREAS said "Bituminous Coal Operators' Association," in behalf of each and all of its members of every kind and character (whether association, company, partnership or individual) has negotiated with the United Mine Workers of America certain amendments to said National Bituminous Coal Wage Agreement of 1950;

NOW, THEREFORE, THIS AGREEMENT made this 18th day of January, 1951, by and between the Bituminous Coal Operators' Association (for and on behalf of each of the named and described associations and companies listed in "Appendix A," hereto attached and made a part hereof) and by and between such other and additional associations, companies and operators as may hereafter become signatory hereto, hereinafter referred to as "Operators," as parties of the first part, and the International Union, United Mine Workers of America, hereinafter referred to as "Mine Workers," on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, and, as amended, carries forward and preserves the terms and conditions of the National Bituminous Coal Wage Agreement of 1950, such amendments, being as follows, to wit:

WAGES

* * *

TERMINATION OF AGREEMENT

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Exhibit No. 26

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED SEPTEMBTR 29, 1952

Effective October 1, 1952

WHEREAS on January 18, 1951, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "National Bituminoue Coal Wage Agreement of 1950 as Amended January 18th, 1951"; and said Operators, signatory to this Agreement, have now negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend, and as amended, carry forward and preserve the terms and conditions of said "National Bituminous Coal Wage Agreement of 1950" and all previous Agreements as therein provided:

NOW, THEREFORE, THIS AGREEMENT made this 29th day of September, 1952, by and between the coal operators, associations, companies and individuals signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950" and all previous agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

MINE SAFETY PROGRAM

* * *

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950

* * *

WAGES

* * *

VACATION PAYMENT

* * *

SENIORITY

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APPLICATION OF CONTRACT TO COAL LANDS

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HOUSE COAL

* * *

MISCELLANEOUS

Amend "Miscellaneous" by striking out subsection 4 and amending subsection 3 to read as follows:

"3. The United Mine Workers of America and the Operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Local and District Disputes" section of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts."

Amend "Miscellaneous" by adding thereto the following, to become subsection 4:

"4. Each operator signatory or who may become signatory hereto hereafter agrees to give proper notice to the President of the local union at the mine by the 18th day of each month that said Operator has made the required payment to the United Mine Workers of America Welfare and Retirement Fund for the previous month."

TERMINATION OF AGREEMENT

* * *

Exhibit No. 27

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE SEPT. 1, 1955

WHEREAS on September 29, 1952, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952"; and said Operators, signatory to this Agreement, have negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend and supplement and as amended and supplemented to carry forward and preserve the terms and conditions of said "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", said "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided:

NOW, THEREFORE, THE AGREEMENT, effective September 1, 1955, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and pre-

serves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

WAGES AND HOURS

* * *

VACATION PAYMENT

* * *

TERMINATION OF AGREEMENT

* * *

Exhibit No. 28

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE OCT. 1, 1956

WHEREAS on September 29, 1952, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952"; and said Operators, signatory to this Agreement, have now negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend and supplement and as amended and supplemented to carry forward and preserve the terms and conditions of said "National Bitumous Coal Wage Agreement of 1950 as Amended September 29th, 1952", said "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided:

NOW, THEREFORE, THIS AGREEMENT, effective October 1, 1956, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

WAGES AND HOURS

* * *

VACATION PAYMENT

* * *

TERMINATION OF AGREEMENT

* * *

Exhibit No. 29

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE DEC. 1, 1958

WHEREAS on September 29, 1952, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "Na-

tional Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952"; and said Operators, signatory to this Agreement, have now negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend and supplement and as amended and supplemented to carry forward and preserve the terms and conditions of said "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", said "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided:

NOW, THEREFORE, THIS AGREEMENT, effective December 1. 1958, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

WAGES AND HOURS

* * *

PROTECTIVE WAGE CLAUSE

* * *

VACATION PAYMENT

* * *

TERMINATION OF AGREEMENT

* * *

Exhibit No. 30

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE APRIL 2, 1964

WHEREAS on September 29, 1952, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952"; and said Operators, signatory to this Agreement, have now negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend and supplement and as amended and supplemented to carry forward and preserve the terms and conditions of said "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", said "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided:

NOW, THEREFORE, THIS AGREEMENT, effective April 2, 1964, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as

parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

MINE SAFETY PROGRAM

* * *

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950

* * *

APPLICATION OF CONTRACT TO COAL LANDS

* * *

WAGES AND HOURS

* * *

VACATION PAYMENT

* * *

SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

Amend the "SETTLEMENT OF LOCAL AND DISTRICT DISPUTES" section of the National Bituminous Coal Wage Agreement of 1950 by striking out all of said section below the caption and inserting in lieu thereof the following:

"Should differences arise between the Mine Workers and the Operators as to the meaning and application of

the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately.

1. Between the aggrieved party and the mine management.

2. Through the management of the mine and the Mine Committee.

3. Through District representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the Operators. Neither the Mine Workers' representatives on the board nor the Operators' representatives on the board shall be the same persons who participated in steps (1), (2), or (3) of this procedure.

5. Should the board fail to agree the matter shall, within thirty (30) days after decision by the board, be referred to an umpire to be mutually agreed upon by the Operator or Operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the Operator or Operators affected and by the Mine Workers.

"A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement."

DISCHARGE CASES

Amend the "DISCHARGE CASES" section of the Appalachian Joint Wage Agreement of June 19, 1941, as carried forward in the National Bituminous Coal Wage Agreement of 1950 by striking all of the language of that section and substituting the following:

"When a mine worker has been discharged from his employment and he believes he has been unjustly dealt with, it shall be a case under the 'Settlement of Local and District Disputes' clause. In all discharge cases should it be decided under the rules of this Agreement that an injustice has been dealt the mine worker, the Operator shall reinstate and compensate him at the rate based on the earning of said mine worker prior to such discharge. Provided, however, that such case shall be taken up within five days from the date of discharge."

SENIORITY

* * *

BATHHOUSE OR WASHROOM

* * *

HELPERS

* * *

NEW MACHINERY

* * *

TERMINATION OF AGREEMENT

* * *

Exhibit No. 31

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE APRIL 1, 1966

WHEREAS on September 29, 1952, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952"; and said Operators, signatory to this Agreement, have now negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend and supplement and as amended and supplemented to carry forward and preserve the terms and conditions of said "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", said "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided:

NOW, THEREFORE, THIS AGREEMENT, effective April 1, 1966, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as amended September 29, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as

therein provided, such amendments, modifications and supplements being as follows, to wit:

MINE SAFETY PROGRAM

* * *

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950

* * *

APPLICATION OF CONTRACT TO COAL LANDS

* * *

WAGES AND HOURS

* * *

VACATION PAYMENT

* * *

SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

Amend the "SETTLEMENT OF LOCAL AND DISTRICT DISPUTES" section of the National Bituminous Coal Wage Agreement of 1950 by striking out all of said section below the caption and inserting in lieu thereof the following:

"Should differences arise between the Mine Workers and the Operators as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise at the mine. an earnest effort shall be made to settle such differences immediately.

1. Between the aggrieved party and the mine management.

2. Through the management of the mine and the mine committee.

3. Through district representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the Operators. Neither the Mine Workers' representatives on the board nor the Operators' representatives on the board shall be the same persons who participated in steps (1), (2), or (3) of this procedure.

5. Should the board fail to agree the matter shall, within thirty (30) days after decision by the board, be referred to an umpire to be mutually agreed upon by the Operator or Operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the Operator or Operators affected and by the Mine Workers.

"A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement."

DISCHARGE CASES

Amend the "DISCHARGE CASES" section of the Appalachian Joint Wage Agreement of June 19, 1941, as carried forward in the National Bituminous Coal Wage Agreement of 1950 by striking all of the language of that section and substituting the following:

"When a mine worker has been discharged from his employment and he believes he has been unjustly dealt

with, it shall be a case under the 'Settlement of Local and District Disputes' clause. In all discharge cases should it be decided under the rules of this agreement that an injustice has been dealt the mine worker, the operator shall reinstate and compensate him at the rate based on the earning of said mine worker prior to such discharge. Provided, however, that such case shall be taken up within five days from the date of discharge."

SENIORITY

* * *

BATHHOUSE OR WASHROOM

* * *

BULLETIN BOARDS

* * *

COMPULSORY RETIREMENT

* * *

HELPERS

* * *

JURY DUTY

* * *

NEW MACHINERY

* * *

TONNAGE RATES

* * *

WORK JURISDICTION

* * *

TERMINATION OF AGREEMENT

* * *

Exhibit No. 17

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1968

Effective October 1, 1968

THIS AGREEMENT, made this 14th day of October, 1968, by and between the coal operators and associations signatory hereto, hereinafter referred to as Operators, parties of the first part, and the International Union, United Mine Workers of America, hereinafter referred to as Mine Workers, on behalf of each member thereof, party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies, and supplements previous agreements as herein provided. This agreement (subject to the amendments, modifications and supplements as hereinafter provided) carries forward and preserves the terms and conditions of the Appalachian Joint Wage Agreement (dated June 19, 1941) effective April 1, 1941, to March 31, 1943, the Supplemental Six Day Work Week Agreement, the National Bituminous Coal Wage Agreement (dated April 11, 1945) effective April 1, 1945, and all the various district agreements executed between the United Mine Workers of America and the various operators and coal associations (based upon the aforesaid basic agreements) as they existed on March 31, 1946, subject to the terms and conditions of this agreement and as amended, modified and supplemented by this agreement as herein set out.

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set forth in this agreement. It is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency

representing the employees of the parties of the first part. It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America, to the extent and in the manner permitted by law, except in those exempted classifications of employment as hereinafter provided in this agreement. This provision does not change the rules or practices of the industry pertaining to management. The Mine Workers intend no intrusion upon the rights of management as heretofore practiced and understood. It is the intent and purpose of the parties hereto that this agreement will promote and improve industrial and economic relationship in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this agreement.

EXEMPTIONS UNDER THIS AGREEMENT

* * *

MINE SAFETY PROGRAM

* * *

WORKMEN'S COMPENSATION AND OCCUPATIONAL DISEASES

* * *

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950

* * *

APPLICATION OF CONTRACT TO COAL LANDS

* * *

WAGES AND HOURS

* * *

VACATION PAYMENT

* * *

CHECKOFF

* * *

SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

Should differences arise between the Mine Workers and the operators as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately: (The parties will not be represented by legal counsel at any of the steps below.)

1. Between the aggrieved party and the mine management.

2. Through the management of the mine and the mine committee.

3. Through district representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the operators. Neither the Mine Workers' representatives on the board nor the operators representatives on the board shall be the same persons who participated in steps (1), (2), or (3) of this procedure.

5. Should the board fail to agree the matter shall, within (20) days after decision by the board, be referred to an umpire to be mutually agreed upon by the operator or operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire

shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the operator or operators affected and by the Mine Workers.

A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement.

DISCHARGE CASES

Amend the "DISCHARGE CASES" section of the Appalachian Joint Wage Agreement of June 19, 1941, by striking all of the language of that section and substituting the following:

When a mine worker has been discharged from his employment and he believes he has been unjustly dealt with, it shall be a case under the "Settlement of Local and District Disputes" clause. In all discharge cases should it be decided under the rules of this agreement that an injustice has been dealt the mine worker, the operator shall reinstate and compensate him at the rate based on the earning of said mine worker prior to such discharge. Provided, however, that such case shall be taken up within five days from the date of discharge.

SENIORITY

* * *

BATHHOUSE OR WASHROOM

* * *

BULLETIN BOARDS

* * *

CHRISTMAS BONUS

* * *

CLASSIFICATION REQUIREMENT

* * *

CLASSIFIED WORK

* * *

COMPULSORY RETIREMENT

* * *

HELPERS

* * *

HOUSE COAL

* * *

JURY DUTY

* * *

NEW MACHINERY

* * *

PAY DAY

* * *

STRIPPING CREWS

* * *

TONNAGE RATES

* * *

WORK JURISDICTION

* * *

CONSTRUCTION WORK

* * *

JOINT COMMISSION ON WAGE RATES

* * *

DISTRICT AGREEMENTS

* * *

This agreement supersedes all existing and previous contracts except as incorporated and carried forward

herein by reference; and all local agreements, rules, regulations and customs heretofore established in conflict with this agreement are hereby abolished. Prior practice and custom not in conflict with this agreement may be continued, but any provisions in district or local agreements providing for the levying, assessing or collecting of fines or providing for "no strike," "indemnity" or "guarantee" clauses or provisions are hereby expressly repealed and shall not be applicable during the term of this agreement. Wherever a conflict arises between this agreement and any district or local agreement, this agreement shall prevail. When day men are transferred to loading coal the individual affected, if aggrieved, shall have the right of review under the settlement of disputes procedures provided in this agreement.

* * *

MISCELLANEOUS

1. Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing any "no strike" or "penalty" clause or clauses of any clause denominated "Illegal Suspension of Work" are hereby rescinded, cancelled, abrogated and made null and void.

* * *

3. The United Mine Workers of America and the operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Local and District Disputes" section of this agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore

practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts.

* * *

NATIONAL CONFERENCES

* * *

INTEGRATED INSTRUMENT

* * *

TERMINATION OF AGREEMENT

* * *

Exhibit No. 19

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1971

Effective November 12, 1971

The National Bituminous Coal Wage Agreement of 1971 contains those provisions in effect September 30, 1971 of the Appalachian Joint Wage Agreement (1941); Supplemental Six Day Work Week Agreement (1943); National Bituminous Coal Wage Agreement (1945); National Bituminous Coal Wage Agreement of 1968.

Note: Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing any "no strike" or "penalty" clause or clauses or any clause denominated "Illegal Suspension of Work" are hereby rescinded, cancelled, abrogated and made null and void.

Article I—ENABLING CLAUSE

THIS AGREEMENT made this 12th day of November 1971, between the coal operators and associations signatory hereto, as parties of the first part (each coal operator which is a signatory hereto called "Employer") and the

International Union, United Mine Workers of America (hereinafter called "Union"), on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties. This agreement carries forward and preserves the terms and conditions of all the various district agreements executed between the United Mine Workers of America and the various operators and coal associations subject to the terms and conditions of this agreement and as amended, modified and supplemented by this agreement as herein set out.

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set forth in this agreement. It is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the employees of the parties of the first part. It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America, to the extent and in the manner permitted by law, except in those exempted classifications of employment as hereinafter provided in this agreement. This provision does not change the rules or practices of the industry pertaining to management. The Mine Workers intend no intrusion upon the rights of management as heretofore practiced and understood. It is the intent and purpose of the parties hereto that this agreement will promote and improve industrial and economic relationship in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this agreement.

Article II—SCOPE AND COVERAGE

* * *

Article III—HEALTH AND SAFETY

* * *

Article IV—WAGES AND HOURS

* * *

Article V—SHIFTS AND SHIFT DIFFERENTIALS

* * *

Article VI—STARTING TIME

* * *

Article VII—ALLOWANCES

* * *

Article VIII—HOLIDAYS

* * *

Article IX—REGULAR VACATION

* * *

Article X—GRADUATED VACATION

* * *

Article XI—CHECKOFF

* * *

Article XII—MANPOWER TRAINING

* * *

Article XIII—SENIORITY

* * *

Article XIV—TONNAGE RATES AND HAND LOADING

* * *

Article XV—WELFARE AND RETIREMENT FUND

* * *

Article XVI—MISCELLANEOUS

* * *

Article XVII—SETTLEMENT OF DISPUTES

Section (a) **Mine Committee**

A committee of three employees shall be elected at each mine by the employees at such mine. Each member of the mine committee shall be an employee of the mine at which he is a committee member, and shall be eligible to serve as a committee member only so long as he continues to be an employee of said mine. The duties of the mine committee shall be confined to the adjustment of disputes arising out of this agreement that the mine management and the employee or employees have failed to adjust. The mine committee shall have no other authority or exercise any other control, nor in any way interfere with the operation of the mine; for violation of this section any and all members of the committee may be removed from the committee. (1941)

Section (b) **Grievance Procedure**

Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time. (The parties will not be represented by legal counsel at any of the steps below.):

(1) By the aggrieved party and his foreman who shall have authority to settle the complaint. Any grievance which is not filed by the aggrieved party within fifteen calendar days after he reasonably should have known of such grievance shall be considered invalid and not subject to further prosecution under the grievance machinery.

(2) If no agreement is reached, the grievance shall be taken up by the mine committee and the mine management within five calendar days of the conclusion of step 1. A standard grievance form shall be completed and jointly signed by the parties to the grievance. Such a form will be agreed upon by the parties.

(3) If no agreement is reached, the grievance shall be taken up by the UMW district representative and a designated representative of the Employer within ten calendar days of the conclusion of step 2.

(4) If no agreement is reached the grievance shall be taken up by the Board within ten calendar days of the conclusion of step 3 or in discharge cases within five calendar days of notice of appeal. The Board shall consist of four members, two of whom shall be designated by the Union and two by the Employer. Neither the Union's representatives on the Board nor the Employer's representatives on the Board shall be the same persons who participated in steps 1, 2, or 3 of this procedure.

(5) Should the Board fail to agree the matter shall, within ten calendar days after decision by the Board, be referred to an umpire who shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and fees incident to the services of an umpire shall be paid equally by the Employer or Employers affected and by the Union.

The grievant shall have the right to be present at each step, if he so desires, of the foregoing procedures until such time as all evidence is taken. A decision reached at any stage prior to step 5 of the proceedings above outlined shall be reduced to writing and signed by both parties. The decision shall be binding on both parties and shall not be subject to reopening except by mutual agreement.

Section (c) **Joint Committee on Arbitration Procedure**

A committee of equal representation from the Employers and the Union will be appointed immediately after the execution of this agreement to study the feasibility of a permanent or chief umpire and/or panel of umpires to arbitrate disputes which may arise under the terms of the agreement.

The committee will examine methods of selection, tenure, compensation and related matters and will complete its report and recommendations no later than April 1, 1972.

Article XVIII—DISCHARGE PROCEDURE

Notwithstanding any other provisions of the National Bituminous Coal Wage Agreement of 1971 the following expedited procedure for the handling of discharge cases is adopted on an experimental basis. This procedure shall remain in effect until November 12, 1972 and shall continue for the term of this agreement unless terminated by thirty-day notice from either party.

No employee shall be summarily discharged.

Where management concludes that the conduct of an employee justifies discharge, he shall be given written notice stating the reason, with a copy to be furnished to the mine committee. He may be relieved from his duties for a period of not more than five calendar days.

Within such five calendar days, the employee may request, and shall be granted, a hearing before the mine superintendent or his designated representative. The employee and the mine committee shall be notified of the time and place of such hearing at which the facts concerning the violation shall be presented. The employee shall be present at the hearing along with the

mine committee and the district representative. After such hearing or if no hearing was requested, mine management shall immediately at the conclusion of such five calendar days notify the employee, the mine committee and the district representative in writing of its decision.

Should the employee believe that mine management's decision is without just cause, the grievance shall be referred directly to step four of the grievance machinery within five calendar days of receipt of such decision and it shall be disposed of in accordance with those procedures of the agreement.

In any case in which management has discharged an employee, it shall be the duty of the company to go forward with its evidence in the hearing and the grievant and the Union will then present the case for the grievant.

In all discharge cases should it be decided by the umpire that an injustice has been dealt the grievant, the company shall be ordered to reinstate such grievant and pay him such wages as he would have earned had he not been initially relieved from his duties and then discharged.

The decision of the umpire shall be final and shall not be subject to reopening except by mutual agreement. Expenses and fees incident to the arbitration shall be borne equally by both parties.

Cases where an employee is relieved of his duties but is not discharged shall be processed under the regular grievance procedure entitled "Settlement of Disputes."

If this provision is not extended, disputes which would have been handled under this provision will be handled under the following provision from the National Bituminous Coal Wage Agreement of 1968 which is incorporated herein for this purpose:

"Discharge Cases

When a mine worker has been discharged from his employment and he believes he has been unjustly dealt with, it shall be a case under the 'Settlement of Local and District Disputes' clause. In all discharge cases should it be decided under the rules of this agreement that an injustice has been dealt the mine worker, the operator shall reinstate and compensate him at the rate based on the earning of said mine worker prior to such discharge. Provided, however, that such case shall be taken up within five days from the date of discharge."

Article XIX—DISTRICT AGREEMENTS

* * *

Section (b) **Prior Practice and Custom**

This agreement supersedes all existing and previous contracts except as incorporated and carried forward herein by reference; and all local agreements, rules, regulations and customs heretofore established in conflict with this agreement are hereby abolished. Prior practice and custom not in conflict with this agreement may be continued, but any provisions in district or local agreements providing for the levying, assessing or collecting of fines or providing for "no strike," "indemnity" or "guarantee" clauses or provisions are hereby expressly repealed and shall not be applicable during the term of this agreement. Wherever a conflict arises between this agreement and any district or local agreement, this agreement shall prevail.

Article XX—MAINTAIN INTEGRITY OF CONTRACT

The United Mine Workers of America and the Employers agree and affirm that they will maintain the integrity of this contract and that all disputes and claims

which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Disputes" article of this agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract and by collective bargaining without recourse to courts.

Article XXI—NATIONAL CONFERENCES

* * *

Article XXII—SEVERABILITY CLAUSE

* * *

Article XXIII—TERMINATION OF AGREEMENT

* * *

Plaintiff's Exhibit No. 91

UNITED MINE WORKERS OF AMERICA

United Mine Workers Building

Washington, D. C. 20005

September 23, 1966

To all Members of the
United Mine Workers of America

Greetings:

This is to officially advise you that at its recent meeting the International Executive Board reviewed the numerous *unauthorized* work stoppages in the coal industry which have been contrary to the policy enunciated by the International Executive Board.

In order to protect the best interests of the entire membership and to prevent unnecessary loss of wages

to the members and royalties to the United Mine Workers of America Welfare and Retirement Fund, the International Executive Board unanimously adopted the following resolution:

"RESOLUTION"

"WHEREAS, local work stoppages involving a mine in whole or in part not officially authorized by the United Mine Workers of America were prohibited by the order of the International Executive Board on October 24, 1951. The Board reaffirmed its earlier order on May 17, 1956, and instructed local unions who fail to utilize the grievance machinery of the joint wage agreement to settle disputes arising thereunder but resort to work stoppages that they would be subject to discipline by the International Executive Board.

"WHEREAS, the Board on May 17, 1956, further determined that local union officers giving aid and comfort to such unauthorized work stoppages as well as individual members guilty of promoting, conducting, or prolonging such unauthorized stoppages would be subject to disciplinary action by the International Executive Board.

"WHEREAS, certain members of the United Mine Workers of America have failed to respect the provisions of the joint industry wage agreement, the international constitution and the declared policy of the union of honoring wage agreements to which it is a party.

"WHEREAS, such willful and ill-advised action on the part of local unions and individual members imperils the welfare of all the members of the union and threatens the integrity of the joint contractual relationship in the coal industry.

"THEREFORE BE IT RESOLVED that the International Executive Board reaffirms its action of October 24, 1951, and May 17, 1956, and implements its officers regarding disciplinary action against individual members. Hereafter when it has proven that any member or members were engaged in promoting, conducting or prolonging an unauthorized work stoppage, such member shall be penalized the sum of five dollars for each day of such unauthorized stoppage. Such penalty shall be in addition to any penalty imposed upon the local unions involved.

"By the action of the International Executive Board this 9th day of September, 1966."

John T. Kmetz	Fred K. Hefferly
John Ghizzoni	R. R. Humphreys
Ewing Watt	William Ure
John P. Cassidy	James W. Ridings
Joseph Yablonski	William Mitch
Pete Phillippi	David Fowler
Mart F. Brennan	Arthur Biggs
Wilbert Killion	John H. Delaney
Joseph T. Kershetsky	R. J. Boyle
Sam Nicholls	Carson Hibbitts
Louis Austin	C. E. Beane
Joe Shannon	C. J. Urbaniak
Henry Allai	

In Behalf of the International Executive Board

W. A. BOYLE
President

GEO. J. TILLER
Vice President

JOHN OWENS
Secretary-Treasurer

Plaintiff's Exhibit No. 92

UNITED MINE WORKERS OF AMERICA

United Mine Workers' Building

Washington, D. C. 20005

October 24, 1951

To All Members, Committeemen and
Officers of All Local Unions
United Mine Workers of America

Dear Sirs and Brothers:

During the past year a wave of unauthorized local strikes or work stoppages occurred in various Districts. In nearly all of these strikes or stoppages the machinery incorporated in joint agreements for the consideration and disposition of grievances was not invoked. The International Executive Board, now in session in Washington, D. C., has given consideration to the implications involved in these strikes or stoppages and reached the following conclusions thereon:

1. These unauthorized strikes adversely affect the contractual relationships between the United Mine Workers of America and the coal operators.

2. Unauthorized strikes cause unnecessary loss of earnings to our members, work hardship upon their families and are not beneficial to the interests of the communities wherein they occur.

3. Unauthorized strikes reflect discredit upon our organization's sixty-year record of honoring contractual provisions and result in strained labor relations between the parties signatory to the joint agreements.

4. In some instances these unauthorized work stoppages have created situations wherein union operations have not been able to meet their commitments and this resulted in these operations losing business to competitors.

5. The joint agreements between our organization and the coal operators contain established machinery for the adjustment of disputes between the parties signatory thereto which eliminate the necessity for calling strikes.

6. These unauthorized strikes not only endanger the stability of the coal industry, but encourage the operators to demand punitive clauses in wage agreements.

On the basis of the foregoing conclusions, the International Executive Board, by unanimous vote, urges all members, local union officers and committeemen, district and international officials to not only refrain from participation in these unauthorized strikes, but to use their efforts and influence to prevent occurrence of said unauthorized strikes in contravention of the International Constitution and in direct opposition to the established policies of the United Mine Workers of America.

We express the hope that the policies outlined herein will be followed in the best interests of our organization and our membership.

On behalf of the International Executive Board, United Mine Workers of America.

JOHN L. LEWIS
President

THOMAS KENNEDY
Vice President

JOHN OWENS
Secretary-Treasurer

Plaintiff's Exhibit No. 94

UNITED MINE WORKERS OF AMERICA

United Mine Workers' Building

Washington, D. C. 20005

May 17, 1956

To the Officers and Members of
the United Mine Workers of America:

DECLARATION OF POLICY

Local work stoppages involving a mine, in whole or in part, not officially authorized by the United Mine Workers of America, were prohibited by order of the International Executive Board, dated October 24, 1951.

Certain local unions have seen fit to ignore that policy and wrongfully authorize and participate in such unwarranted stoppages. In doing so, these local unions and the membership thereof are defiant of their Union and imperil the welfare of all other members.

The International Executive Board, endowed with authority to take such action, reaffirms its previous declaration, dated October 24, 1951, and again instructs compliance therewith.

The Executive Board further advises as follows:

1. Local unions will utilize the machinery of the Joint Wage Agreement for the settlement of all disputes arising thereunder.

2. Local unions failing to do so, and resorting to local stoppages, will be subject to discipline and penalties will be imposed by the International Executive Board.

3. Local unions engaged in unwarranted local stoppages, and picketing other mines not engaged in the dispute, will suffer double penalties.

4. Local union officers giving aid and comfort to such unwarranted stoppages, or who are guilty of negligence in their failure to prevent them, will be subject to disciplinary action by the International Executive Board, at its option. Individual members of the local union, guilty of reprehensible conduct in promoting, conducting or prolonging such unwarranted stoppages, will in like fashion be subject to disciplinary action and penalties imposed by the International Executive Board.

5. Sundry local unions, recently guilty of ignoring the machinery of the Joint Wage Agreement, have been disciplined and penalties imposed. Repetition of their offenses will bring further, more severe penalties.

The International Executive Board calls upon all loyal members to give active support to the sound policy of honoring the provisions of the Joint Industry Wage Agreement and the laws of this Union. Local unions and individual members moving in defiance and imperiling the welfare of all the members of this Union must be prepared to accept responsibility for their action and the penalties which will be inevitable.

Done this 17th day of May, 1956 by the International Executive Board, United Mine Workers of America, Washington, D. C.

ATTEST:

JOHN OWENS
Secretary-Treasurer

Portions of Plaintiff's Exhibit No. 34—
UMWA Constitution

ARTICLE II.

Objects.

* * *

Second. To increase the wages, and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes.

* * *

ARTICLE III.

Jurisdiction.

Section 1. The International Union shall be composed of workers eligible for membership in the United Mine Workers of America, and may be divided into Districts, Sub-Districts and Local Unions. The International Union shall have supreme legislative, executive and judicial authority over all members and subordinate branches, and shall be the ultimate tribunal to which all matters of importance to the welfare of the membership and subordinate branches shall be referred for adjustment. Between International Conventions the supreme executive and judicial powers of the International Union shall be vested in its Executive officers and Executive Board in accordance with and subject to the provisions of this Constitution.

Sec. 2. All Districts, Sub-Districts and Local Unions must be chartered by, and shall be under the jurisdiction of and subject to the laws of the International Union and rulings of the International Executive Board. Charters of Districts, Sub-Districts and Local Unions may be revoked by the International President, who shall have authority to create a provisional government for the

subordinate branch whose charter has been revoked. This action of the International President shall be subject to review by the International Executive Board upon appeal by any officers deposed or any members affected thereby. Until such review is had and unless said order of revocation is set aside, all members, officers and branches within the territory affected by the order of revocation shall respect and conform to said order. An appeal may be had from the decision of the Executive Board upon such order of revocation, to the next International Convention.

* * *

ARTICLE VI.

Local Unions.

* * *

Sec. 3. If in the judgment of the officers of the International, District or Sub-District Unions, any Local Union has taken any action opposed to the interests of the United Mine Workers, the International Union or the District or Sub-District Unions having jurisdiction over the Local Union shall have the right to reverse the action of the Local Union.

* * *

ARTICLE XVI.

Strikes.

Section 1. No District shall be permitted to engage in a strike involving all or a major portion of its members without the sanction of an International Convention or the International Executive Board.

Sec. 2. Strikes shall not be called in any unorganized field without the sanction of an International Convention

or the International Executive Board and no financial aid shall be furnished by the International Union for the support of any strike until after the strike has been in effect four weeks, unless otherwise decided by the International Executive Board.

* * *

ARTICLE XX.

Miscellaneous.

* * *

Sec. 9. Any member or members engaged in an unauthorized work stoppage resulting in shutting down a mine shall, after due notice and hearing, upon conviction suffer such penalty as may be imposed upon them by the respective District Organization.

Portions of the Court's Charge

1456 There are three classes of defendants in this case. There is the International Union—that's called the Mine Workers of America. The District—that is District 17—of the United Mine Workers of America. That's two. Then the three individual local unions, that is Local 6572, Local 7626 and Local 2236.

* * *

1457 The rules of liability, if any, are different for the locals and the other two defendants, the District Union and the International Union. Considering the locals first, they would be responsible for a given work stoppage or strike because of the mass action of their members in participating in a strike or work stoppage over a dispute which should have been settled under the grievance and arbitration provisions contained in the two coal wage agreements referred to previously. The mass action of the members in such cases must realistically be regarded as action of the given local union.

Mass action occurs when all or a great majority of all of the members of a given local union engage in an otherwise unlawful, unexcused or unjustified work stoppage.

The standard of responsibility of the International Union and the District 17 Union is different from that of the locals. Basically, the International Union and the District Union would be responsible for a given work stoppage or strike in either of two instances.

1458 First the International Union and District 17 Union each had a duty and responsibility under the applicable coal wage contracts to use all reasonable means available to them or each of them if they had reason to believe that work stoppage or strike would occur to prevent the same from occurring in violation of the contracts and upon notice of such strikes occuring, to terminate such unlawful strikes once begun. If you find from a preponderance of the evidence that the International and District Unions did not use all of the reasonable means available to them to prevent work stoppages or strikes from occurring in violation of the contract, or to terminate any such work stoppages or strikes after they began, then the Court instructs you that the International or District Unions could be liable for each work stoppage or strike.

Second, if the work stoppage or strike was engaged in by the locals while they were acting as agents for District 17 and/or the International either within the scope of their authority, then the International or District 17 or both of them could be liable for such work stoppage or strike.

Unincorporated associations, such as the defendant International and District Unions, are in law persons but of course, cannot act otherwise than through officers or

employees or other agents. The law, therefore,
1459 holds unincorporated associations, such as defendant International and District Unions responsible for all the acts of their respective officers, or employees or other agents provided such acts were done within the scope of their authority.

Authority to act for a labor union in a particular matter or in some particular way or manner may be inferred from the surrounding facts and circumstances shown by the evidence in the case. That is to say, authority to act for a labor union or to engage in a particular conduct for it, like any other factor at issue in a civil case need not be established by direct evidence but may be established by indirect or circumstantial evidence. And every act of every officer or employee or other agent on behalf of, or in the name of a labor union if done within the scope of his authority is in law the act of the union itself.

The plaintiff contends that the defendants, International Union and District 17 through their contract and constitution made the local unions their agents for purposes of settling arbitrable disputes. The plaintiff introduced evidence that the International left all and the District part of the handling of disputes which is part of the business of the union to the locals. If you believe from a preponderance of the evidence that the local union or unions was or were acting as agents within the scope of their authority for the International Union
1460 and/or District 17 or both by engaging in a given work stoppage or strike, then you may find the International and/or District 17 responsible for it.

However, a union is not responsible for the acts of an agent which are performed directly contrary to orders or directions given the agent unless the union knows the

agent is or has been performing those acts and does not reasonably act to prevent the agent from performing them. If you believe from a preponderance of the evidence that the locals were agents of the District and International, while engaging in a work stoppage or strike and that the locals were ordered not to engage in the work stoppage or strike, but that the International and District knew such work stoppages or strikes would occur and were occurring, had the authority to stop and prevent them, but did not do so, you may find the International and District responsible for those work stoppages or strikes.

* * *

1475 I want to explain that to you, so that there can be no misunderstanding. This is a very difficult verdict form to prepare to get a full understanding of what the jury means. In any case, if you should
1476 find a verdict against the International or the District, it cannot exceed the amount you find against the local. I think that part ought to be clear. Any amount —if you do find against the International or District for any amount, either the same or a lesser amount, it is not in addition to the other, but as a part of it—overlaps, so to speak, where it would be joint. For example, if you should find ten thousand dollars against one of the locals, ten thousand dollars against the International, and ten thousand dollars against the District, it would all be the same ten thousand dollars stacked one on top of the other. If you should find, in that example, ten thousand dollars against the local, five thousand dollars against the District, and five thousand dollars against the International, the five thousand of the two—International and District—would be as a part of the ten. It's not in addition to it. It wouldn't make a total of twenty thousand. The overall would be only ten. Then the local and International

would be responsible under the verdict for only five of that ten. Understand that.

And I want to make—I have tried to instruct on this and perhaps—I'm not sure I got it clear. I want to make this part real clear as to the liability of the International Union and the District Union. If you find, as the plaintiff has contended, that the International and District
1477 should have anticipated the strikes, by reason of the great numbers of them, and knew that they were coming, then it is their contention that they had a duty to do something to not let them strike at all, in which event they would expect your verdict to be as much as—the same as the locals.

In the event you don't agree with that, then the next area would be that the plaintiff contends that you would be obligated to find against the International and local from such time as they had an opportunity to learn of the strike and to act, and to act responsively, to take all reasonable steps available to stop the walkout or strike.

The third area, the defendants contend, of course, that, in the first place, the International and District had no obligation in advance; second, that they acted as quickly as they possibly could; and third, that they took every reasonable available step to end the strike and therefore, there would be no responsibility as to them.

So you could have in your verdict forms then, you could have a verdict against the local for whatever amount you think they are responsible for under the evidence in the case. You could have the same or a lower amount or nothing against the International and District, as you find the evidence is. In the numbers of cases where there was a defense, of course, you could find against the plaintiff as to those locals even.

Defendant's Rejected Instruction on "Union Responsibility"

NOTE: This instruction was refused at Transcript, p 1481

UNION RESPONSIBILITY

1500 (1) A union is not liable for "irresponsible—acts by individual workers—" "Unions may only
1501 be held responsible for the authorized or ratified actions of their officers and agents—"The fact that the strike took place is not sufficient in itself to raise the presumption that the union, as an entity separate from its members, is responsible—A union is not responsible for an unauthorized strike which the union officials are endeavoring to stop."

(2) Each of the five labor organization defendants Local Union 2236, Local Union 6572, Local Union 7626, District 17 and International Union, is a separate and distinct legal entity and each is not responsible for the actions of any or all of the other organizations unless it authorizes, instigates or encourages the actions of the others and is liable only for the acts of the others it has in fact so authorized or instigated. "A local union is a legal entity apart from its District and International —"

(3) Each of the three local union defendants would only be liable for a work stoppage or strike if it acting through its officers or agents approved, authorized, adopted, encouraged or prolonged the continuance of the work stoppage.

(4) The defendant District 17, United Mine Workers of America, would be liable for a work stoppage only if it acting through its officers or agents approved, authorized, adopted, encouraged or prolonged the continuance of the work stoppage.

1502 (5) Defendant District 17, United Mine Workers of America "would not be liable for the actions of the officers or individual members of the local unions unless it is shown that District 17, United Mine Workers of America authorized, participated in, or ratified the acts of the local union or individual member after express knowledge of such acts, which are claimed to be violations of the contract." "Where a union did not call, authorize or encourage a strike, and, on the contrary, employed its authority to oppose it, no liability for an unauthorized or wildcat strike could be attributed to the union."

(6) Defendant International Union, United Mine Workers of America "would not be liable for the actions of the officers or individual members of the local unions unless it is shown that the International Union, United Mine Workers of America authorized, participated in, or ratified the acts of the local union or individual member after express knowledge of such acts, which are claimed to be violations of the contract." "Where a union did not call, authorize or encourage a strike, and, on the contrary, employed its authority to oppose it, no liability for an unauthorized or wildcat strike could be attributed to the union."

(7) Even if a work stoppage is approved by a local union, neither by District 17, United Mine Workers of America nor the International Union, United Mine
1503 Workers of America is "liable for 'wild cat' strikes and is not required to — take any action with regard to them — The question is not whether the International Union, United Mine Workers of America did everything it might have done, but whether it adopted, encouraged or prolonged the continuance of the strike.

Sample Verdict—As to Strike No. 41

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

CARBON FUEL COMPANY, a corporation, *Plaintiff*

v. Civil Action No.

UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 17, United Mine Workers of America; LOCAL UNION NO. 6572, United Mine Workers of America; LOCAL UNION NO. 7626, United Mine Workers of America; and LOCAL UNION NO. 2236, United Mine Workers of America, *Defendants* 74-152-CH

We, the Jury, find as to work stoppage no. 41

1. _____ (for or against) LOCAL UNION NO. 6572, United Mine Workers of America, and assess the damages at $_____;

2. _____ (for or against) LOCAL UNION NO. 7626, United Mine Workers of America, and assess the damages at $_____;

3. AGAINST (for or against) LOCAL UNION NO. 2236, United Mine Workers of America, and assess the damages at $19,976.00;

If you made a finding against one or more of the above Local Union defendants, then, and only then, may

you make a finding against either or both of the defendants below.

4. AGAINST (for or against) the UNITED MINE WORKERS OF AMERICA, and assess the damages at $6,658.00;

5. AGAINST (for or against) DISTRICT NO. 17, United Mine Workers of America, and assess the damages at $6,658.00.

Note: The verdict against the International and/or the District may be the same in amount or less than that found against the Local or Locals and shall be considered as a joint verdict with the verdict or verdicts against such Local or Locals.

April 1, 1976. (Date)

ARLIE F. LYNCH (Foreman)

Sample Judgment—As to Strike No. 41

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF WEST VIRGINIA

Civil Action File No. 74-152 CH

JUDGMENT

As to Work Stoppage No. 41

CARBON FUEL COMPANY, a corporation,
Plaintiff

vs

UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 17, United Mine Workers of America; LOCAL UNION NO. 6572, United Mine Workers of America; LOCAL UNION NO. 7626, United Mine Workers of America; and LOCAL UNION NO. 2236, United Mine Workers of America,
Defendants

This action came on for trial before the Court and a jury, Honorable K. K. Hall, United States District Judge, presiding, and the issues have been duly tried and the jury duly rendered its verdict,

It is Ordered and Adjudged that as to work stoppage number 41 the plaintiff, Carbon Fuel Company, a corporation, recover of the defendant, Local Union No. 2236, United Mine Workers of America, the sum of $19,976.00; recover of the defendant, the United Mine Workers of America, the sum of $6,658.00; and recover of the defendant, District No. 17, United Mine Workers of America, the sum of $6,658.00; all with interest thereon

at the rate of six percent (6%) as provided by law, and its costs of action; said liability of the United Mine Workers of America and of District No. 17; United Mine Workers of America, being joint with that of Local Union No. 2236, United Mine Workers of America but only as to the amount or amounts above specified.

Dated at Charleston, West Virginia, this 1st day of April, 1976.

/s/ JAMES A. McWHORTER
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE

FOURTH CIRCUIT

NO. 77-1422

CARBON FUEL COMPANY,
Appellee,

versus

UNITED MINE WORKERS OF AMERICA:
DISTRICT NO. 17, United Mine
Workers of America;
LOCAL UNION NO. 6572, United
Mine Workers of America;
LOCAL UNION NO. 7626, United
Mine Workers of America;
LOCAL UNION NO. 2236, United
Mine Workers of America;
Appellants.

Appeal from the United States District Court for the Southern District of West Virginia.

This cause came on to be heard on the record from the United States District Court for the Southern District of West Virginia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed in part and vacated in part. The case is remanded in part to the United States District Court for the Southern District of West Virginia with instructions consistent with the opinion of this Court filed herewith.

FILED Sept. 21, 1978

U. S. Court of Appeals
Fourth Circuit

/s/ WILLIAM K. SLATE, II
Clerk